UNITED NATIONS

SECRETARIAT

ST

Distr.
GENERAL

ST/SOA/118
15 September 1972
ENGLISH/FRENCH/SPANISH
ORIGINAL: VARIOUS

CAPITAL PUNISHMENT

Information from Governments compiled by the United Nations Secretariat

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INTRODUCTORY NOTE

1. Pursuant to General Assembly resolution 2393 (XXIII), the Secretary-General, in a note verbale dated 10 March 1969, invited Governments of Member States to ensure that the most careful legal procedures and the greatest possible safeguards for the accused in capital cases in countries where the death penalty obtains are applied, inter alia, by providing that (a) a person condemned to death shall not be deprived of the right to appeal to a higher judicial authority or, as the case may be, to petition for pardon or reprieve; (b) a death sentence shall not be carried out until the procedures of appeal or, as the case may be, of petition for pardon or reprieve have been terminated; (c) special attention shall be given in the case of indigent persons by the provision of adequate legal assistance at all stages of the proceedings. The Governments were asked to consider whether those careful legal procedures and safeguards might not be further strengthened by the fixing of a certain time-limit before the expiry of which no death sentence would be carried out. The Governments were also requested to inform the Secretary-General of their attitude to possible further restriction of the use of the death penalty or to its total abolition, and to indicate whether any changes in that respect had taken place since 1965.

2. The Secretary-General sent reminders in July 1970, in August 1971 and in December 1971 requesting Governments who had not done so to submit their information.

3. The General Assembly, in its resolution 2857 (XXVI), requested the Secretary-General to circulate to Member States the replies received. The present note contains substantial excerpts from the information communicated to the Secretary-General by Governments from March 1969 to March 1972. The full text of the replies is available for consultation in the Secretariat.

INFORMATION RECEIVED FROM GOVERNMENTS

Afghanistan

/Original: English/
/10 September 1969/

1. Punishment by death for premeditated political and military crimes has been stipulated in the penal system of Afghanistan. The convict is entitled to defend himself freely within the limit of time that is set forth in pertinent laws. Similarly, in most cases, the convict can seek pardon of his sentence by appealing to the King who is the sole authority in granting general and personal remits.

2. The verdict of a death penalty by a primary court is not final and is subject to the confirmation of such verdict by the higher courts and the signature of the King.

3. Indigent convicts, in conformity with article II of the statute concerning the law of the affairs of the defenders, are entitled to use the services of a defence counsel. To this end, an adequate amount of money has been provided for in the budget of the Ministry of Justice to be used for the services rendered to indigent convicts by a defence counsel.

4. The possibility of limiting the enforcement of the punishment involving a death sentence will be taken into account in the light of relevant international conventions and the values embodied in the Universal Declaration of Human Rights at the time of the enactment of the new criminal code, the draft of which has already been prepared.

5. It should be noted that, this consideration (restriction of the use of the death penalty) is embodied in the basic principles of the Islam religion dealing with human rights.

Argentina

/Original: Spanish/
/29 October 1969/

Al respecto cabe hacer notar que la pena de muerte fue suprimida legalmente por el Código Penal sancionado en 1921.

No obstante ello, debe manifestarse que dicha supresión tuvo un carácter más doctrinario que práctico, puesto que en los hechos las ejecuciones capitales se encontraban fuera de nuestro sistema represivo, tal como se sostuvo en la exposición de motivos formulada por la Comisión Especial de Legislación Penal y Carcelaria de la Honorable Cámara de Diputados de la Nación (Código Penal, edición oficial, año 1924, pág. 115).

Tal criterio también fue sostenido en el despacho de las Comisiones de Códigos y de Justicia Militar de la Honorable Cámara de Senadores (op. cit., pág. 609).

Australia

/Original: English/
/12 January 1971/

Australia has always provided safeguards for persons accused in capital cases by the most careful legal procedures, by appeals, by petitions for reprieves, and by opportunities for pardon. In view of the availability of the greatest possible safeguards to a person who is condemned to death in Australia, it is considered unnecessary that an arbitrary time-limit be set for which a death sentence can be carried out. It has always been the practice of Australian higher courts to grant priority to the hearing and determination of appeals in capital cases on grounds of humanity, and because the liberty of the subject is at stake. The fixing of an arbitrarily arrived at time-limit might be a disservice to an accused person who, while having available to him and being assisted by legal aid to use the full opportunities of legal appeal and petition for reprieve or pardon, should not be kept unnecessarily in suspense and possible anguish.

An indigent person who is charged with a capital offence in Australia is provided with legal counsel at all stages of the proceedings.

As regards the Secretary-General's inquiry concerning the present attitude to and possible further restriction of the use of the death penalty, the Australian authorities advise that in December 1968 the State of Tasmania abolished capital punishment for murder, and in March of the same year the Federal Government abolished capital punishment for all offences except murder and treason in the Australian Capital Territory, the Northern Territory, the Australian Antarctic Territories, Norfolk Island, Christmas Island and Cocos (Keeling) Islands. The position in the other States of the Commonwealth is unchanged.

Austria

/Original: English/
/16 April 1969/

Article 85 of the Austrian Federal Constitution provided for the abolition of capital punishment in ordinary proceedings. According to this provision, the death penalty could only be pronounced in exceptional, that is, emergency procedures.

By virtue of the Federal Constitutional Law of 7 February 1968, amending the provisions of the Federal Constitutional Law of 1929 on exceptional tribunals and death penalty, the death penalty in exceptional procedures was abolished. A provision of the Federal Constitution, which formally authorized the setting-up of exceptional tribunals in cases envisaged in the law of penal proceedings, was likewise lifted.

Article 85 of the Federal Constitution, as amended now, reads as follows: "The death penalty is abolished". It follows from the foregoing that the death penalty cannot be pronounced in Austria.

Barbados

/Original: English/
/15 December 1970/

The Government of Barbados does not propose any further restrictions of the death penalty, nor its total abolition. There has been no change in this respect since 1965.

Belgium

/Original: French/
/1 December 1970/

La législation belge répond adéquatement aux souhaits exprimés par le paragraphe 1 de la résolution. En effet :

Dans les cas où la peine capitale est prononcée par la cour d'assises, si le condamné ne bénéficie pas du droit de faire appel de la décision, il peut se pourvoir en cassation contre celle-ci. Il a de plus, dans certains cas, la possibilité de demander la révision du procès.

Dans les cas où la peine de mort est prononcée par une juridiction militaire, le condamné peut appeler de la décision devant la cour militaire.

Dans tous les cas, lorsque le condamné a épuisé les voies de recours judiciaires qui lui sont accordées, il peut demander la commutation de sa peine par mesure de grâce. Celle-ci lui est toujours accordée.

L'assistance judiciaire est de toute manière prévue et accordée aux personnes indigentes.

La pratique en honneur en Belgique satisfait également au voeu exprimé par le point b du paragraphe 1, de la résolution, la peine de mort n'étant, en fait, plus exécutée.

Quant à l'invitation contenue dans le paragraphe 2 de la résolution, le Gouvernement belge a mis à l'étude un avant-projet de loi abolissant l'exécution de la peine de mort. Cet avant-projet est la consécration légale de la pratique admise et généralisée de l'inexécution de la peine capitale en Belgique.

L'existence de la peine de mort subsistera cependant, en ce sens qu'elle pourra toujours être prononcée dans les cas prévus par la loi. Le Gouvernement belge estime en effet que le maintien de cette peine dans le Code pénal conserve, grâce à son exemplarité, un caractère préventif et intimidant, même s'il est désormais interdit de la mettre à exécution. Le simple fait qu'une infraction soit punie de la peine capitale plutôt que d'une peine perpétuelle, opère sur l'opinion publique un effet psychologique indépendamment de la question de savoir si elle sera exécutée ou non.

Bhutan

[Original: English]
[12 April 1972]

According to the codified laws of Bhutan, capital punishment can be awarded in the following cases:

1. If a person who has been convicted once of wilful homicide, after serving his prison sentence and release commits another wilful homicide, he will be awarded capital punishment for the second offence.

2. If a person commits wilful homicide of more than one person at a time, he will be awarded capital punishment.

3. Any person guilty of treason will be awarded capital punishment.

It may also be mentioned that only the full bench of the High Court of the country, consisting of five judges, can award the sentence of capital punishment. The entire Bench of five judges must be unanimous in their decision. If there is even one dissenting opinion, capital punishment cannot be awarded, and a lesser sentence will have to be given. It may also be mentioned that being a Buddhist country, and, therefore, having a high respect for life in all forms, in spite of the above legal provisions, no person has been awarded the sentence of capital punishment for wilful homicide since the accession of the present King to the throne in 1952.

Brazil

[Original: English]
[12 March 1969]

Both capital punishment and life imprisonment are barred by the Brazilian Federal Constitution.

[Original: English]
[28 September 1971]

The most elaborate legal procedures and the greatest possible safeguards [have always been provided] for the defendants in capital cases, even to the extent of postponing capital executions indefinitely. From 1855 to 1890, no executions were performed, despite their inclusion in the penal code.

In 1890, capital punishment was abolished by Decree No. 774 of 20 September of the above-mentioned year. Although abolished for common crimes, the Brazilian Government, two years ago, considered it indispensable to restore death penalties, as provided in Constitutional Act No. 1, of 17 October 1969, and Decree Law No. 898, of 29 September of the same year.

According to the provisions of the above-mentioned legal instruments, appeals are obligatory, in cases of capital sentences. Once such a sentence is passed, communication to that effect is sent to the Head of State. The sentence cannot be carried out for 30 days after the communication is received, and during this period, the Head of State has the power to commute the sentence.

These capital punishment provisions are of a very exceptional nature, and they apply only in cases of attempt against the national security with criminal loss of life.

However, sentences of this character have not been carried out up to now in accordance with the new legal provisions.

Bulgaria

/Original: French/
/12 May 1970/

I. Dans la conception du droit pénal bulgare, la peine capitale est une mesure temporelle et d'exception. Elle est prévue seulement pour les crimes prémédités graves. Cette conception explique la tendance constante à la limitation du champ d'application de cette peine, tendance qui se fait jour dans le nouveau Code pénal élaboré entre 1965 et 1968, adopté le 15 mars 1968 et entré en vigueur le 1er mai 1968.

II. Aux termes du nouveau Code pénal la limitation de la peine capitale s'exprime ainsi :

1. En comparaison avec l'ancien Code pénal les cas au sujet desquels la peine de mort est prononcée ont été réduits de près d'un tiers et, en conséquence, la peine capitale n'est appliquée qu'aux crimes suivants :

a) Crimes graves contre l'Etat : haute trahison, atteinte contre la sécurité extérieure et intérieure de l'Etat, y compris destruction d'objectifs essentiels de la propriété socialiste;

b) Meurtres prémédités qualifiés graves, rapts accompagnés de meurtres et crimes graves présentant un danger général et ayant provoqué la mort de plusieurs personnes;

c) Crimes de guerre commis en temps de guerre et crimes contre la paix et l'humanité.

2. La peine de mort est prévue comme une alternative de la peine de prison. Elle peut être infligée seulement dans les cas où le crime est d'une gravité exceptionnelle et qu'une peine moins sévère ne saurait atteindre les buts de la répression pénale. Bien que la loi la prévoie, la peine de mort n'est pas prononcée dans les cas de circonstances atténuantes.

3. La peine capitale ne peut être infligée à une personne qui, au moment du crime, n'avait pas vingt ans révolus, ou 18 ans révolus en ce qui concerne les militaires, en temps de guerre.

4. La peine de mort ne peut être infligée à une femme en état de grossesse au moment du crime ou au moment de la condamnation. La peine de mort n'est pas exécutée s'il s'agit d'une femme en état de grossesse et elle est remplacée par une peine de prison de vingt ans.

III. L'inculpé faisant l'objet d'un acte d'accusation prévoyant la peine de mort a le droit à un défenseur obligatoire. S'il ne choisit pas lui-même son défenseur, la Cour lui en désigne un d'office.

L'inculpé qui fait l'objet d'un jugement de première instance, le condamnant à la peine de mort, a droit à l'appel par les voies de recours ordinaires devant un tribunal supérieur. Il a droit de demander l'abrogation du jugement devenu définitif par les voies également du recours extraordinaire : pourvoi en cassation et pourvoi en révision concernant les jugements ayant force de chose jugée.

Le condamné pour un crime passible de peine de mort a droit d'adresser au Présidium de l'Assemblée nationale une demande en grâce. Aucun délai n'est prévu au sujet de cette demande. La peine de mort n'est pas exécutée tant que le Présidium de l'Assemblée nationale ne s'est pas prononcé sur sa substitution par une peine privative de liberté. Le Présidium de l'Assemblée nationale doit examiner la question d'office même si la demande en grâce fait défaut.

Tels sont les nouveaux développements en ce qui concerne l'application de la peine capitale en République populaire de Bulgarie depuis 1965.

Cameroon

/Original: French/
/19 July 1972/

PROCEDURES LEGALES ET GARANTIES A TOUTE PERSONNE ACCUSEE D'UN CRIME PASSIBLE DE LA PEINE CAPITALE

Voies de recours ouvertes au condamné à mort

En droit camerounais, toute personne accusée d'un crime et condamnée à la peine capitale dispose d'un délai de dix jours pour former contre la décision un pourvoi en cassation (art. 40 de l'Ordonnance No 59-86 du 17 décembre 1959 portant organisation judiciaire de l'Etat : J.O.C. 1959, p. 1802).

A l'expiration de ce délai, si la personne condamnée ne s'est pas pourvue, il lui reste le recours en grâce devant l'autorité politique suprême (le Président de la République).

Sur ce point, le droit de grâce est conféré au Chef de l'Etat par la Constitution fédérale (art. 12, alin. 5). Le Président de la République exerce ce droit après avis du Conseil fédéral de la magistrature.

En conclusion, sur le premier point, aucun individu condamné à la peine capitale n'est privé du droit de recours soit devant une instance judiciaire supérieure (pourvoi en cassation devant la Cour suprême) soit devant l'autorité politique nationale suprême (le Chef de l'Etat).

Exécution de la condamnation capitale

En République Unie du Cameroun, aux termes de l'article 22 du Code pénal, toute condamnation à mort est soumise au Président de la République en vue de l'exercice de son droit de grâce.

Tant qu'il n'a pas été statué par le Président de la République sur la grâce du condamné, aucune condamnation à mort ne peut recevoir exécution.

En conclusion, aucune condamnation à la peine capitale n'est jamais susceptible d'exécution au Cameroun avant que les voies de recours (pourvoi en cassation et recours en grâce) soient épuisées.

Assistance judiciaire aux indigents condamnés à la peine de mort

Aux termes de l'article 4, alinéa 2 de l'Ordonnance No 59-86 du 17 décembre 1959, l'assistance judiciaire est accordée suivant la nature du procès, la qualité et la situation des parties, soit de plein droit, soit sur demande après instruction.

En outre, l'article 20 alinéa 4 du décret No 60-224 du 5 décembre 1960, modifié par les décrets No 64/DF/155 du 6 mai 1964 et 65/DF/93 du 2 avril 1965, dispose que les condamnés à mort demandeurs au pourvoi en cassation bénéficient de plein droit de l'assistance judiciaire.

Le Gouvernement camerounais, dans son attitude actuelle, tend à restreindre considérablement l'application de la peine de mort; exemple : dans une affaire appelée "Affaire de Tombel" en 1966-1967, les dix-sept condamnés à mort ont tous bénéficié de la grâce du Chef de l'Etat et ont vu leur peine commuée en peine perpétuelle.

Les exécutions capitales sont de plus en plus rares au Cameroun.

Canada

/Original: English/
/16 May 1969/

(a) (i) Under the Criminal Code there is a Right of Appeal to the highest Appellate Court in a particular province and from there to the Supreme Court of Canada. Moreover, each case receives full consideration by the Governor in Council as to whether the sentence should be commuted to life imprisonment.

(ii) Under the Criminal Code the courts have full power to reprieve a person sentenced to death for any purpose (see s.643). Reprieves are always granted to enable a given case to be considered by the Governor in Council or the Appellate Courts.

(iii) Legal aid is a matter for the provincial authorities except in the Northwest Territories and in the Yukon. Some provinces have a much more elaborate system of legal aid than others. In any event, legal aid is provided throughout Canada for accused persons in capital cases. I should also refer to Section 590 of the Code which authorizes the provincial courts of appeal to assign counsel to an appellant.

(b) There would appear to be no need in Canada to fix time-limits.

As you know the murder provisions of the Criminal Code of Canada were amended by Statutes of Canada 1967-68, c. 15 to reduce the number of circumstances leading to convictions punishable by death. These amendments have effect for a five-year trial period. The last hanging took place in Canada on 11 December 1962.

Ceylon

/Original: English/
/22 July 1969/

In substance the relevant provisions of the Laws of Ceylon correspond to the provisions of the first operative paragraph of resolution 2393 (XXIII), entitled "Capital punishment", adopted by the United Nations General Assembly on 26 November 1968. The interval between the passing of a death sentence and its execution is usually about 10 months. This interval of time is occasioned by the hearing of an appeal against the death sentence by the Court of Criminal Appeal and the reviewing of the death sentence thereafter by the Minister of Justice.

Chad

/Original: French/
/18 July 1972/

Le Gouvernement de la République du Tchad n'a pas pour le moment envisagé l'abolition de la peine capitale. Il y a lieu d'observer toutefois que depuis de nombreuses années, aucune condamnation à la peine capitale n'a été prononcée au Tchad par les cours criminelles.

Colombia

/Original: Spanish/
/8 November 1971/

El artículo 29 de la Constitución Política de Colombia establece que el legislador no podrá imponer la pena capital en ningún caso. Este precepto constitucional tiene plena vigencia dentro del territorio de la República de Colombia y no existen posibilidades inmediatas para que sea modificado.

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Cyprus

/Original: English/
/5 November 1970/

1 (a) (i). Under Cyprus law every person convicted of any criminal offence has a right of appeal to the Supreme Court. Thus, section 25 (2) of the Courts of Justice Law, No. 14 of 1960, provides that:

> "Subject to the provisions of the Criminal procedure Law but save as otherwise in this subsection provided every decision of a Court exercising criminal jurisdiction shall be subject to appeal to the High Court. Any such appeal may be made as of right against conviction of sentence on any ground."

Section 132 of the Criminal Procedure Law, Cap. 155, was construed by the High Court (as the Supreme Court was then known) in the case of Kazantzis v. The Republic (1961) Cyprus Law Reports II, where it has held that -

> "a person convicted may lodge a notice of appeal in all cases either against conviction or against sentence and leave by this Court or any Judge thereof is no longer a requisite".

The right of a person condemned to death to petition for pardon or reprieve is expressly safeguarded by article 53 of the Cyprus Constitution which reads as follows:

(1) The President or the Vice-President of the Republic shall have the right to exercise the prerogative of mercy with regard to persons belonging to their respective community who are condemned to death.

(2) Where the person injured and the offender are members of different communities such prerogative of mercy shall be exercised by agreement between the President and the Vice-President of the Republic; in the event of disagreement between the two the vote for clemency shall prevail.

(3) In case the prerogative of mercy is exercised under paragraph 1 or 2 of this article the death sentence shall be commuted to life imprisonment.

(4) The President and the Vice-President of the Republic shall, on the unanimous recommendation of the Attorney-General and the Deputy Attorney-General of the Republic, remit, suspend, or commute any sentence passed by a court in the Republic in all other cases.

1 (a) (ii). The Criminal Procedure (Amendment) Rules, 1964, lay down that in passing a sentence of death the Assize Court shall fix the date of execution, which should not be less than eight weeks and not more than nine weeks from the date of the imposition of the death penalty. This allows adequate time for the lodging of an appeal, and, where the appeal is dismissed, for the making of a petition for

mercy. Further, it is provided by the same Rules that the Supreme Court may postpone the date of execution and fix another date in lieu thereof.

1 (a) (iii). The right of an accused person who has not sufficient means to pay for legal assistance to be given free legal assistance is expressly safeguarded by the Constitution (vide article 12, paragraph 5 (c), and article 30, paragraph 3 (d)). Moreover, section 64 (1) of the Criminal Procedure Law, Cap. 155, provides that an Assize Court trying an undefended person for an offence punishable with death shall assign an advocate to defend him. Such advocate is paid out of public funds.

1 (b). It is considered that the time-limits prescribed by the Criminal Procedure (Amendment) Rules, 1964, (vide para. 1 (a) (ii) above) provide sufficient safeguards for this purpose.

2. No changes of the existing law relating to capital punishment have taken place since 1965. Nevertheless, an amendment of the law is seriously contemplated. The amendment proposed will not amount to abolition of the death penalty, but will give the Court discretion to pass a lighter sentence than that specified for the offence (i.e. death), if the circumstances of the case so warrant.

It may also be noted that according to article 7 (2) of the Constitution of Cyprus the death penalty may be provided for by law in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law.

Denmark

/Original: English/
/4 September 1969/

The information transmitted with the note of 17 January 1962 from the Permanent Representative of Denmark and with the note of 25 May 1966 from the Acting Permanent Representative is still valid.

Ecuador

/Original: Spanish/
/16 September 1971/

Dentro de la Legislación Ecuatoriana no consta la pena de muerte como castigo para ningún tipo de delito.

Egypt

/Original: French/
/18 January 1971/

Vu la gravité des crimes en général - et ceux dans lesquels la condamnation à mort est prononcée en particulier - le législateur leur a assuré certaines procédures en vue de réaliser plus de garanties.

Ainsi, l'inculpé et les témoins sont cités devant la cour huit jours au moins avant l'audience (art. 374 du Code d'instruction criminelle).

Lors du renvoi de l'inculpé devant la cour d'assises, un défendeur lui sera désigné, à moins qu'il n'ait choisi un avocat pour le défendre (art. 88/a du Code d'instruction criminelle).

La présence d'un défenseur pour assister l'inculpé dans toute la procédure est une question d'ordre public. Toute atteinte au droit de défense de l'inculpé entraîne la cassation de l'arrêt.

Pour parfaire la protection du droit de défense de l'inculpé devant la cour d'assises, l'article 375 du Code d'instruction criminelle prévoit que, sauf le cas d'excuse ou d'empêchement dûment constaté, le défendeur, qu'il ait été nommé ou qu'il ait été choisi par l'inculpé, est tenu d'assister son client à l'audience ou de s'y faire remplacer, sous peine d'être condamné par la cour d'assises à une amende n'excédant pas 50 livres égyptiennes, sans préjudice de poursuites disciplinaires s'il y a lieu. L'article 381 du Code d'inscruction criminelle édicte que la cour d'assises ne peut prononcer la condamnation à mort qu'à l'unanimité des voix de ses membres. Avant de prononcer la peine capitale, la cour d'assises demande l'avis du Moufti, en lui transmettant les pièces de la procédure.

Si le Moufti ne donne pas son avis dans un délai de dix jours de cette communication la cour passe outre.

Pour plus de sûreté des garanties établies en faveur des condamnés à la peine capitale, l'article 46 du Code de procédure devant la cour de cassation, prévoit que le Ministère public doit - en cas d'arrêt contradictoirement rendu, et prononçant la peine capitale - soumettre l'affaire à la cour de cassation accompagnée d'une note exposant son avis.

Pour l'exécution de la peine capitale, le législateur a établi une procédure spéciale tendant à réaliser le maximum de garanties en faveur du condamné. L'article 470 du Code d'instruction criminelle prévoit la transmission du dossier de l'affaire au Président de la République par le Ministre de la justice, lorsque la condamnation à la peine capitale devient définitive.

Si la peine n'est pas commuée, ou le condamné gracié dans un délai de quatorze jours, le jugement est exécuté.

La loi dispose que les parents du condamné à mort peuvent le visiter la veille du jour fixé pour l'exécution, et que la direction des prisons doit leur en donner avis. L'exécution à la peine de mort a lieu dans la prison ou dans tout autre endroit non découvert, et ce sur demande écrite adressée par le procureur général au directeur général des prisons. Tout condamné à mort est pendu (art. 13 du Code pénal).

L'exécution s'accomplit en présence d'un substitut du Parquet, du commandant de la prison, du médecin de la prison ou de tout autre médecin désigné par le Parquet général, d'un délégué de l'administration des prisons et d'un délégué du Ministère de l'intérieur. La peine de mort ne peut être exécutée pendant les jours fériés ou pendant les fêtes se rapportant à la religion du condamné.

Si la condamnée est enceinte l'exécution sera différée à deux mois après l'accouchement. Lorsque la religion du condamné à mort lui impose la confession ou toute autre obligation religieuse avant la mort, toutes les facilités nécessaires seront entreprises afin de permettre à un homme de religion de lui rendre visite.

Il n'existe actuellement aucune tendance à l'abolition de la peine capitale.

Fiji

/Original: English/
/5 October 1971/

The position in Fiji with regard to capital punishment is that the death penalty is mandatory in relation to the offences of treason, instigating foreign invasion, the murder of a Police Officer acting in the execution of his duty or of the person assisting the Police Officer so acting, a murder committed by a person who at the time of the commission of the offence was a prisoner and repeated murders.

Before 20 June 1966 the death penalty was mandatory in all cases of murder but by the Penal Code (Amendment) Ordinance of 1966 capital murder and repeated murder were made the only forms of murder which attracted the death penalty. By that Ordinance the mandatory death penalty in all cases of murder was suspended until 31 May 1971 and by a resolution of the House of Representatives, this period has been extended to 31 May 1972.

It was announced in the House of Representatives at the time of the debate on the resolution to extend the suspension to 1972 that consideration would be given before the expiry of this suspension as to the future policy to be adopted in Fiji.

Finland

/Original: English/
/16 September 1970/

A declaration given in 1826 de facto abolished the execution of capital punishment in Finland. Since then death sentences have not been executed in peace time, although the present penal legislation does still include capital punishment.

The death sentence is exclusive or alternate punishment for certain most heinous crimes such as high treason, premeditated murder of a Head of State of a friendly country, and certain military crimes.

Capital punishment can, however, only be sentenced for a crime committed by a person over 18 years of age during war-time and executed only when the country is declared to be in state of war. Upon the termination of the state of war all unexecuted death sentences are by law transformed to life-long sentences in the penitentiary.

A death sentence given during the state of war can firstly be appealed to the Court of Appeals and from there to the Supreme Court. The accused is entitled to free trial and legal assistance. Military Courts have to provide legal assistance for the accused even if he does not apply for it himself whenever the court

considers that the characteristics of the case so require. A death sentence cannot be executed before the President of the Republic has decided on the granting of mercy, if an application has been submitted or the question about mercy has otherwise been raised. Notwithstanding the provisions about appeal and mercy, the Military Court can exceptionally in utmost critical situations in war and with certain other conditions order an immediate execution of a death sentence.

It has been considered in recent years in Finland that the provisions referred to above require revision in spite of their human nature. Though the war time experiences show that total abolition of capital punishment during the state of war is not possible, the aim is, however, to decrease the number of crimes on which the conviction can be a death sentence. To stress the exceptional character of capital punishment and for reasons mentioned above, the Permanent Commission of Drafting Legislation was asked in 1965 to prepare a proposal for a special law on capital punishment in war time by collecting all provisions of death sentences to this law and deleting them from the general penal code.

Finally, in the provisions concerning extradition, a condition forbidding execution of the extradited will be inserted.

France

[Original: French]
[23 June 1969]

I. Tout individu condamné à la peine de mort par une cour d'assises peut former un pourvoi en cassation contre l'arrêt prononçant cette peine.

Aux termes de l'article 568 du Code de procédure pénale, ce pourvoi doit être formé dans un délai de cinq jours francs à partir du jour du prononcé de la décision si elle a été rendue contradictoirement.

Le pourvoi peut donc être formé le jour où la décision a été rendue (dies a quo) pendant les cinq jours qui suivent et le lendemain du cinquième jour (dies ad quem).

Alors qu'en règle générale les demandeurs au pourvoi en cassation sont tenus de consigner l'amende éventuelle de cassation, d'un montant de cent francs (art. 580 du Code de procédure pénale), qui leur sera restituée si leur pourvoi est accueilli, mais restera acquise à l'Etat en cas d'échec, les condamnés à une peine criminelle - telle la peine de mort - sont dispensés à la fois de la consignation et de l'amende (art. 582 du Code de procédure pénale).

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Pendant les délais du recours en cassation, et, s'il y a eu recours, jusqu'au prononcé de l'arrêt de la cour de cassation, il est sursis à l'exécution de la décision pénale (art. 569 du Code de procédure pénale).

Le pourvoi est jugé par la Chambre criminelle de la cour de cassation sur le rapport d'un conseiller et après les observations des avocats et les conclusions du Ministère public.

En principe, la Chambre peut statuer à l'expiration d'un délai de dix jours à compter de la réception du dossier à la cour de cassation. Toutefois, elle doit statuer d'urgence et par priorité et, en tout cas, avant l'expiration d'un délai de trois mois à compter de la réception du dossier, lorsque le pourvoi est formé contre un arrêt de cour d'assises ayant prononcé la peine de mort (art. 604 du Code de procédure pénale).

II. Si la cour de cassation accueille le pourvoi du condamné, elle casse l'arrêt qui lui a été déféré et renvoie l'affaire devant une cour d'assises autre que celle qui a rendu l'arrêt (art. 610 du Code de procédure pénale). Si elle le juge mal fondé, elle rend un arrêt de rejet (art. 607 du Code de procédure pénale).

Dans ce dernier cas, le Parquet de la cour de cassation informe aussitôt le Ministre de la justice du rejet du pourvoi en vue de lui permettre de préparer l'instance gracieuse à l'issue de laquelle le Président de la République titulaire du droit de grâce aux termes de l'article 17 de la Constitution du 4 octobre 1958, décidera s'il y a lieu ou non à exécution du condamné.

En effet, l'article 713 - alinéa 2 - du Code de procédure pénale dispose : "La condamnation ne peut être mise à exécution que lorsque la grâce a été refusée".

Le plus souvent, la grâce est expressément sollicitée par le condamné ou par ses parents, ses amis ou son défenseur. Mais il n'est pas nécessaire qu'un recours ait été présenté. Dans tous les cas de condamnation à mort, le Président de la République est saisi après une instruction d'office.

Avant de prendre sa décision, le Chef de l'Etat reçoit le ou les défenseurs du condamné. En outre, le Conseil supérieur de la magistrature, organisme constitutionnel présidé par le Président de la République, est consulté sur le mérite d'une mesure de grâce.

III. Il convient de préciser, en outre, que le Code de procédure pénale prévoit dans ses articles 622 et suivants une voie de recours dirigée contre toute décision pénale revêtue de l'autorité de la chose jugée, mais susceptible d'être entachée d'une erreur de fait. Il s'agit du "pourvoi en révision" qui est soumis à la Chambre criminelle de la cour de cassation.

Un tel pourvoi peut être formé contre une condamnation à la peine capitale. Il en est notamment ainsi lorsqu'après la condamnation, un fait vient à se produire ou à se révéler, ou lorsque des pièces inconnues lors des débats sont produites, de nature à établir l'innocence du condamné (art. 622-4° du Code de procédure pénale).

IV. En règle générale, les individus qui font l'objet d'une procédure criminelle et ne disposent pas de ressources suffisantes pour s'assurer le concours d'un défenseur se voient désigner par le Bâtonnier de l'Ordre des avocats un défenseur d'office qui les assiste à toutes les étapes de la procédure.

L'article 317 du Code de procédure pénale dispose d'ailleurs qu'à l'audience de la cour d'assises "la présence d'un défenseur auprès de l'accusé est obligatoire".

V. Les procédures légales décrites ci-dessus paraissent suffisamment protectrices des droits des individus condamnés à la peine capitale. Il en est notamment ainsi de l'instruction d'office d'une instance gracieuse pour permettre au Chef de l'Etat d'exercer éventuellement son droit de grâce.

A cet égard, il convient de rappeler les dispositions déjà citées de l'article 713 alinéa 2 du Code de procédure pénale.

Dans ces conditions, il n'apparaît pas nécessaire de prévoir un renforcement de ces procédures.

VI. Le nombre des cas où la peine de mort est encourue était, dans le Code pénal français de 1810 et jusqu'en 1832, de 36. Il est actuellement de 15. Il y a donc eu incontestablement une restriction assez importante de l'application de la peine capitale.

Périodiquement, des propositions de loi sont déposées en vue de son abolition.

Depuis la dernière guerre mondiale une dizaine de propositions parlementaires ont été présentées. Les plus récentes datent de février 1966 et juillet 1968. Jusqu'à présent aucune de ces propositions n'est venue en discussion devant le Parlement.

Greece

/Original: English/
/27 May 1969/

I. (a) According to Greek law, a person condemned to death has always the right to appeal to the Supreme Court, as well as to apply for pardon.

(b) A death sentence is not executed before the procedure for pardon is terminated. If the condemned person does not apply for pardon, then the General Prosecutor or the Minister of Justice can and does usually enforce the procedure for pardon (art. 4 and 5, para. I, Law 68/1968).

(c) Indigent persons are never deprived of the legal assistance of an attorney. Such attorney at law is appointed by the Court or by the Bar Association.

II. There is no time-limit before the expiry of which a death sentence cannot be executed; but, in fact, no death sentence is executed before all possible procedures on behalf of the condemned are terminated (appeal before the Supreme Court, pardon procedure). In any case, there is a time-limit, fixed by the law (3 years) after the expiry of which the death sentence, which for some reason has not been executed, is automatically converted to a life sentence (art. 116 of the Penitentiary Code).

III. According to the Greek Penal Code (art. 86) the death penalty can be applied only to certain cases prescribed by the law which are: (1) if the crime is particularly hideous and abhorrent because of the way in which it was perpetrated and the circumstances surrounding it, and (2) if the criminal is considered dangerous to society. By this provision, the application of the death penalty is limited to few cases. Furthermore, death sentences are not carried out most of the time.

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Guatemala

/Original: Spanish/
/9 March 1972/

Como lo establece el artículo 54 de la Constitución de la República, "La pena de muerte tendrá carácter extraordinario. No podrá imponerse con fundamento en presunciones, ni se aplicará a mujeres o menores de edad, a mayores de setenta años, a reos de delitos políticos, ni a reos cuya extradición haya sido concedida bajo esa condición".

Por otra parte, según el mismo texto constitucional, "Contra las sentencias que impongan la pena de muerte serán admisibles todos los recursos legales pertinentes, inclusive los de casación y de gracia. Estos dos recursos no serán admitidos en los casos de invasión del territorio, plaza o ciudad sitiados o movilización con motivo de guerra", finalizando el mencionado artículo con el siguiente párrafo "La pena se ejecutará después de agotarse todos los recursos".

Además de extraordinaria, la pena de muerte es en nuestro medio de escasa aplicación, ya que en los últimos seis años únicamente se han ejecutado dos reos, los señores José Ixcajó Revolorio y Julio Roldán Godínez, ambos enjuiciados por el asesinato y violación de una menor de ocho años, crimen éste que conmovió la opinión pública nacional.

De conformidad con las leyes vigentes la pena de muerte se aplica por los delitos de asesinato, traición, secuestro cuando a resultas del mismo se causare la muerte del secuestrado, y en algunos otros casos de carácter grave calificados expresamente por ley anterior a su perpetración.

Como es sabido el procedimiento a que se sujetan los procesos, que terminan con la pena de muerte, está rodeado de amplias garantías para la defensa del reo, señaladas en los artículos 46, 48, 49, 50, 51, 52, 53, 55 y 56, de la Constitución de la República, así como por el Código de Procedimientos Penales y la Ley Constitutiva del Organismo Judicial que regulan los recursos de apelación, recursos de queja, los extraordinarios de casación y de gracia, además del derecho de exhibición personal, amparo, etc., que son instituciones vigentes en Guatemala y garantizan plenamente la defensa y la integridad de los enjuiciados, y en tanto no se agoten todos los medios de defensa, nuestra legislación estipula que la pena de muerte no podrá ejecutarse.

En cuanto a la tendencia a restringir la pena de muerte en Guatemala, cabe observar que la supresión de la misma implica la reforma constitucional del caso y la derogatoria de las disposiciones del Código Penal y otras leyes especiales, lo cual no depende del Poder Ejecutivo, sino de lo que una Asamblea Nacional Constituyente y el Congreso de la República dispongan al respecto, pero desde luego se estima que no es oportuno propiciar tales reformas, en vista de los poquísimos casos en que la pena de muerte se ha aplicado (dos fusilamientos en los últimos seis años), como porque el mantener dicha pena en nuestra legislación es de orden intimidatorio para quienes son proclives a los delitos de asesinato y otros que merecen la pena de muerte.

Hungary

/Original: English/
/4 May 1971/

The provisions of operative paragraph 1 (a) /of General Assembly resolution 2393 (XXIII)/ are to be considered acceptable.

(i) According to the Hungarian criminal code, recourse to legal redress, that is petition for pardon, is admissible in the case of every death sentence. The applicable legal remedies can in general be either ordinary or extraordinary. The prevailing law not only grants the person condemned to death the right to petition for pardon, but also in default of appeal the case must be submitted to the Presidential Council of the Hungarian People's Republic for consideration of the exercise of the power of pardon.

(ii) According to the Hungarian criminal code, a death sentence shall not be carried out until the procedures of appeal or of petition for pardon have been terminated.

(iii) Hungarian legislation ensures also that in the course of criminal proceedings no one suffers disadvantage for lack of the financial means necessary for the defence.

The costs of procedure are advanced by the State, and in every case involving a major offence - and even if circumstances prevent the defendant from having adequate legal defence - the court shall appoint defence counsel ex officio.

The procedure proposed for consideration in paragraph 1 (b) of the resolution cannot be accepted.

After the possible legal remedies have been exhausted and the petition for pardon has been declined, there can be no logical reason for postponing execution of the sentence. To attain the aims of punishment it is best to impose a penalty which within the rules of the legal procedures, follows as soon as possible upon the commission of the offence. This applies also to capital punishment. Reprieve in itself is no guarantee that the punishment is legally administered. Such guarantee should be provided by the rules of criminal procedure.

It should be noted in this connexion that according to the Hungarian criminal code in force capital punishment is an exceptional sort of penalty. The law provides for the imposition of capital punishment for the most serious offences such as qualified cases of manslaughter, crimes against the State, war crimes and crimes against humanity, crimes against social property, and military offences; but even in these cases the penalty of death is only an alternative punishment (besides loss of liberty). Its application is admissible by law only if the aim of punishment cannot be attained through any other sort of penalty. In such cases, however, the Hungarian criminal code precludes the applicability of capital punishment against persons under 20 years of age.

Iceland

/Original: English/
/7 September 1971/

Capital punishment was abolished in Icelandic law in the year 1928 and has never been reinstituted. It might also be pointed out that the last time the death penalty was levied in Iceland was in 1830. Thus the right to life, provided for in article 3 of the Universal Declaration of Human Rights is fully guaranteed in Iceland.

India

/Original: English/
/25 February 1972/

There has been no change in the constitutional decision of the Government providing for capital punishment in respect of certain crimes, e.g. murder, waging or attempting to wage war or abetting the waging of war against the Government of India. The high incidence of murders does not warrant the abolition of the death penalty. Besides, the Indian law on the subject is flexible enough and gives discretion to the trial court to award the alternative sentences of life imprisonment. If a woman sentenced to death is pregnant, the execution of the sentence can be postponed or if the court thinks fit it can be commuted to imprisonment for life. Other safeguards are that the accused can seek confirmation by an appeal to the High Court/Supreme Court in some cases as of right and in others on a certificate by the High Court or with the special leave of the Supreme Court. Thereafter, a convict under sentence of death has the right to make a mercy petition to the Government of the State and to the President of India who have powers to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute sentences in certain cases. The only change that has since taken place is that the Law Commission Report on the question of abolition of capital punishment in India has since been laid on the table of both Houses of Parliament in 1971. The report is currently under examination of the Union Government in consultation with State Governments.

Iran

/Original: English/
/9 November 1970/

(a) The rights referred to by the above-mentioned General Assembly resolution /2393 (XXIII)/ of the United Nations have been secured under Iranian laws.

(i) A person condemned to death has the right to appeal to a higher judicial authority and after confirmation of the verdict, has the right further to petition for reprieve or pardon;

(ii) A death sentence shall not be carried out until the procedures of appeal have been exhausted, after which it shall be further deferred until the results of the procedures of petition for reprieve or pardon have been announced;

(iii) Indigent persons shall have the right to adequate legal assistance (including a legal-aid lawyer) at all stages of the procedures.

(b) Ref. paragraph 1 (b) of the resolution. Under Iranian legal procedures, the submission of an appeal for higher judicial authority is fixed by a time-limit and, after confirmation of the sentence in the Supreme Court, the condemned person has full right to appeal or petition for reprieve or pardon, and as pointed out above, no death sentence shall be carried out until the termination and announcement of the results of the procedures for reprieve or pardon.

Finally, the Iranian Government is, at present, not considering the question of restriction or total abolition of the death penalty. However, the Iranian Government may consider the restriction of the death penalty at an appropriate time in the future. No measures have been taken for the restriction or total abolition of the death penalty since 1965.

Iraq

/Original: English/
/16 December 1970/

A person condemned to death automatically enjoys the right to have his case and the decision thereof reviewed by the High Court which has the authority to quash, amend, commute or confirm the sentence. However, a person condemned to death by the Capitalized Revolutionary Court which has exceptional jurisdiction to decide in certain specified cases, has no right of appeal or review before any other judicial forum because the decision of this court is final. Nevertheless, in all cases where a sentence of death has been rendered ordinarily by a Court or

exceptionally by the Revolution's Court, the actual execution of the decision does not take place before the actual confirmation of the President of the Republic who has the constitutional authority, in all cases, to commute the sentence or pardon it.

In addition the indigent accused of a crime punishable by death can get legal aid in case no advocate is prepared to defend him.

Finally, the legal situation as exemplified above has not been fundamentally changed since 1965.

/3 September 1971/

The accused is entitled to a fair and public hearing by an independent Tribunal and the Iraqi Constitution specifically provides that the accused is to be presumed innocent until proved guilty and that the right of defence is a sacred right and that Court hearings should be public unless the Court decides otherwise.

Ireland

/Original: English/
/17 February 1971/

(1) Apart from courts martial, special criminal courts and military tribunals (none of which are part of the normal machinery of justice), the only court with jurisdiction to pass a death sentence is the Central Criminal Court.

(2) A death sentence imposed by the Central Criminal Court may be appealed to the Court of Criminal Appeal. There may be a further appeal to the Supreme Court on a point of law of exceptional public importance.

(3) In the passing of a sentence of death a date is fixed that may not be less than 17 days or more than 26 days after the date of sentence. In the event of an appeal, the date of execution is stayed, and if the appeal is unsuccessful the new date of execution may not be less than 14 days or more than 18 days after the determination of the appeal.

(4) The Criminal Justice Act, 1951, allows for the submission of a petition by a condemned person to the Government for commutation of the death sentence when the legal machinery for appeal has been exhausted.

(5) Free legal aid is provided in capital cases where it appears to the Court that the means of the accused person are insufficient to enable him to obtain legal aid for his defence.

(6) With regard to the State's attitude to possible further restriction of the use of the death penalty or to its total abolition, there is no change to report since 1965. Nobody has been convicted of capital murder within the meaning of the Criminal Justice Act, 1964, since the passing of that Act (or for many years before that). The last execution took place in 1954.

Israel

[Original: English]
[3 December 1971]

No changes have occurred since 1965 in the attitude of the State of Israel in connexion with the death sentence. The death sentence continues to be confined to a very narrow range of offences, namely, treason at the time of actual conduct of war, the punishment of Nazis in restricted cases and genocide. No further restriction of the existing very narrow scope for the imposition of the death sentence is at present contemplated. The strict observance of due process continues to ensure the greatest possible safeguards for the accused in capital cases, and the death sentence has indeed not been imposed in Israel since the only occasion when it was carried out, in 1962, in the case of the notorious Nazi criminal, Adolf Eichmann.

Italy

[Original: Italian]
[20 August 1970]

1. Article 27 of the Constitution of the Italian Republic specifies that "the death penalty shall be applied only in the cases laid down by the military laws of war".

Even before the Constitution entered into force on 1 January 1948, the death penalty had been abolished for the offences specified in the Penal Code by Legislative Decree of the Lieutenant of the Realm No. 224 of 10 August 1944.

A subsequent provision of the Constitution extended the abolition of capital punishment to military penal laws in peace-time and replaced it by penal servitude for life; this later development in Italian legislation is expressly sanctioned by Legislative Decree No. 21 of 22 January 1948.

Consequently, at the present time in Italy only military penal legislation relating to war-time provides for the death penalty.

2. With regard to the procedures and guarantees for persons sentenced to capital punishment in war-time, article 87 of the Constitution states that the President of the Republic "may grant pardons and commute sentences" and that, in every case, provision shall be made for the assistance of a legal counsel at every stage of the judicial proceedings.

Article 290 of the military penal code of war specifies that a judgement involving the death penalty becomes operative 24 hours after it has been handed down or, if an appeal has been lodged, 24 hours after the person sentenced has been notified that the appeal has been rejected. On the other hand, the death penalty becomes operative immediately if the judgement has been handed down by military courts of war attached to expeditionary forces abroad, or by naval courts or special courts.

The harshness of these penalties is, however, mitigated by the fact that, with the exception of judgements handed down by special military courts, all sentences involving the death penalty are subject to review by the commandant of the unit to which the court is attached, who may make a formal proposal that the sentence be remitted or commuted, independently of any petition for pardon which may have been submitted by the person sentenced, or by the members of his family or his legal counsel.

Furthermore, the execution of the sentence is deferred whenever the person sentenced suffers from a serious mental or physical disability or in the case of a pregnant woman.

Jamaica

[Original: English]
[9 September 1971]

In Jamaica, the trial of a person accused of a capital offence takes place in three (3) stages:

(a) The laying of information before a Justice of the Peace;

(b) The Preliminary Inquiry before a Judge of the Resident Magistrates' Courts;

(c) The trial before a Judge of the Supreme Court and a jury of twelve (12) persons.

The first stage, the laying of information in respect of the charge before a Justice of the Peace, is for the purpose of a warrant for the arrest and detention of the person accused. A Justice of the Peace, to whom a sworn statement of the alleged facts is made, may refuse to authorize the arrest and detention. The person making the charge is however free to go to any other Justice of the Peace

or a Clerk of the Courts for the parish in which the offence is alleged to have taken place and repeat the process of laying the information for the purpose of obtaining the warrant to arrest and detain the accused person.

The second stage, the Preliminary Inquiry, is before a Judge of the Resident Magistrates' Courts. At the Preliminary Inquiry, if the prosecution fails to make out a prima facie case, the accused person is dismissed from the charge by the Judge. If additional evidence is obtained, notwithstanding, the dismissal at the Preliminary Inquiry, the accused person may be charged again with the same offence.

The third stage is the trial. If a prima facie case is made out the prosecution at the Preliminary Inquiry, a Judge of the Supreme Court with a jury of twelve (12) persons, proceeds with the trial.

By virtue of the Poor Prisoner's Defence Law, 1961, where it appears to a Judge of the Resident Magistrates' Court before whom a person is charged with a capital offence, or the Judge of the Supreme Court, that the means of that person are insufficient to enable that person to obtain legal aid, the Judge of the Resident Magistrates' Court or the Judge of the Supreme Court shall grant to that person a legal aid certificate which shall entitle him to free legal aid in the preparation and conduct of his defence in the appropriate proceedings or in such appropriate proceedings as may be specified in the legal aid certificate and to have counsel or solicitor assigned to him for that purpose in the prescribed manner. Appropriate proceedings include the Preliminary Inquiry.

A person who is convicted of a capital offence may appeal against his conviction to the Court of Appeal.

In the case of such an appeal, by virtue of Section 19 (2) of the Judicature (Appellate Jurisdiction) Law 1962, if it appears to the Court of Appeal that the appellant does not have sufficient means to obtain legal aid, that Court shall in all such cases assign counsel to appear on behalf of the appellant at the hearing of the appeal.

A further appeal lies with the Judicial Committee of the Privy Council of the United Kingdom.

Legal Aid is also made available to poor persons convicted of capital offences in relation to their appeals to the Judicial Committee of the Privy Council. In addition to the cost of preparing the necessary application for leave to appeal, the Government meets the cost of the Solicitor and Counsel in England to represent the convicted person.

If the appeal of the Judicial Committee of the Privy Council fails, Section 91 of the Constitution requires that where any person has been sentenced to death for an offence against the law of Jamaica, the Governor-General shall request a written report of the case from the trial judge together with such other information derived from the record of the case or elsewhere as he may require to be forwarded to the Privy Council.

The Privy Council then makes a recommendation to the Governor-General.

In acting upon the recommendation, the Governor-General may grant a free pardon, or a pardon subject to conditions, grant a respite either indefinite or for a specified period, from the execution of the sentence of death, or substitute a less severe form of punishment.

By virtue of Section 25 of the Judicature (Appellate Jurisdiction) Law 1962, sentence of death shall not be executed until after the expiration of the time (14 days) within which notice of appeal may be given, and if notice is so given, the sentence shall not be executed until after the determination of the appeal, or where an application for leave to appeal is finally refused.

No changes in respect of the use of the death penalty have been made since 1965.

Japan

/Original: English/
/16 December 1970/

1. No new measures have been taken with regard to subparagraphs (a) and (b) since the adoption of General Assembly resolution 2393 (XXIII) of 26 November 1968.

2. Since 1963, the Legislative Council, which is the Advisory Body to the Minister of Justice, has been assiduously deliberating on the question of all-round amendment to the present penal law.

In this Council, the question of capital punishment has been the subject of the most sincere discussion. Especially, the following two points; namely the decrease of the categories of crimes to which the death penalty can be applied and the limitation of the application of the death penalty to crimes liable to it, have been carefully considered, but no progress has been observed as yet.

Jordan

/Original: Arabic/
/15 July 1969/

The procedures followed in respect of the death sentence in the regular courts under the Code of Civil Procedure, No. 9 of 1961, are as follows:

1. The sentence is passed by a court of first instance acting in its capacity as a criminal court.

2. An appeal may be made to a court of appeal.

3. An appeal may be made to the Court of Cassation.

4. The Public Prosecutor transmits the sentence and relevant documents, together with a statement of the grounds for execution of the sentence, to the Minister of Justice.

5. The documents are submitted by the Minister of Justice to the Council of Ministers.

6. The decision of the Council of Ministers concerning execution of the sentence is submitted to His Majesty the King.

7. A royal irade (decree) is issued, approving execution of the sentence.

In the case of a death sentence passed by a military court martial, a military council or the National Security Tribunal, the only condition required for execution is confirmation by the King on the basis of a recommendation by the Council of Ministers.

The confirmation or commutation of the death sentence and the granting of pardon are the exclusive prerogatives of His Majesty the King in all cases.

The only legal provisions for the appointment of counsel to defend the accused are contained in article 208 of the Code of Criminal Procedure, which reads as follows:

> "1. In the case of crimes punishable with death, penal servitude for life or life imprisonment, after the Public Prosecutor has filed the case with the court, the presiding judge or the judge representing him shall summon the accused and ask him whether he has appointed counsel to defend him. If he has not and his material circumstances make it difficult for him to do so, the presiding judge or his representative shall appoint counsel for him.
>
> "2. The counsel appointed in accordance with the preceding paragraph shall be paid a fee not exceeding five dinars for each session of the court, plus the necessary travelling expenses, out of the Government Treasury."

The above provisions apply only to the regular courts, since article 15 of the Martial Law Directives stipulates that courts martial shall not be bound by the Code of Criminal Procedure. The statute of the National Security Tribunal makes no reference to this subject, nor is any such provision found in the Military Penal Code or in the Arab Legion Law. However, in practice, these courts voluntarily proceed in accordance with the provisions of the above-mentioned article 208 in the cases which come before them.

With regard to mitigation of the sentence, it is the practice of the courts in cases where the motive for the murder was a matter relating to honour, to regard

this motive as an extenuating circumstance justifying the application of article 99 of the Penal Code, which provides for commutation of the death sentence to a sentence of penal servitude for a term of not less than 10 years and commutation of a sentence of life imprisonment to one of penal servitude for a term of not less than five years. This motive does not constitute established grounds for the granting of pardon.

Kenya

/Original: English/
/18 July 1969/

The laws of Kenya impose the most stringent safeguards as regards capital punishment. Furthermore, under section 71 of the Revised Kenya Constitution "no person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted".

There are only two capital offences in Kenya and these are treason and murder. All the other offences are punishable either with specified prison sentence or a fine, and in some cases, both imprisonment and a fine.

There exists in Kenya certain legal safeguards that are commensurate with subparagraph (a) of paragraph 1 of the United Nations General Assembly resolution on capital punishment /resolution 2393 (XXIII)/. Among these is the right to appeal to the highest judicial tribunal of the land. Secondly, a death sentence cannot be carried out unless both the judicial and extrajudicial machineries have been exhausted. Lastly, any person who is charged with a capital offence is entitled to free legal aid.

Under the Criminal Procedure Code of Kenya, no person can be committed to the High Court for a capital offence until a Preliminary Inquiry has been held. Thus, under section 230 of the Criminal Procedure Code, a subordinate court is empowered to hold a Preliminary Inquiry. If such a court considers that there is sufficient evidence to commit the accused person to the High Court for trial, it shall do so (section 240 of the Criminal Procedure Code). If, on the other hand, the court considers that there is insifficient evidence to commit him for trial, it shall order that he be discharged (section 239 of the Criminal Procedure Code).

If the subordinate court in accordance with section 240 considers that there is sufficient evidence against the accused person, it shall commit him to the High Court for trial. After committal, the same court will inquire whether that person has got means to employ a lawyer to defend him. In case he has not, the court shall order that a lawyer be engaged to defend him at public expense. He shall, therefore, be ensured of a fair trial at the High Court and not a fraction of his interests shall be overlooked.

After such person has been found guilty by the High Court, he is granted an automatic right of appeal to the Court of Appeal of East Africa (section 379 of the Criminal Procedure Code). This Court hears all the appeals from all the three East African territories, namely, Kenya, Uganda and the United Republic of Tanzania. This is the highest court of the land and no person can be deprived of his life before his case has been determined by this Court.

Despite this exhaustive judicial machinery, a condemned man has got a constitutional right to petition His Excellency, the President, for the Prerogative of Mercy. Under section 27 of the Constitution, the President is empowered to grant pardon to any person who is convicted of any offence or to substitute a less severe punishment for any punishment that may have been imposed. Thus a person who has been sentenced to suffer death may have his sentence commuted into a prison sentence of a specified duration.

While exercising his Prerogative of Mercy, the President acts on the advice of an Advisory Committee on the Prerogative of Mercy established under section 28 of the Constitution. The Committee on Prerogative of Mercy, where a person has been sentenced to death, peruses all the relevant records of the case and thereafter advises the President in accordance with its finding.

The foregoing sets out the process which must be exhausted in all cases where a person is accused of a capital offence. There is no doubt that it goes a long way to satisfy the requirements of subparagraph (a) of paragraph 1 of the resolution.

As regards subparagraph (b) of paragraph 1 of the resolution, attention may be drawn to section 27 (b) of the Constitution. This subsection empowers the President to "grant to any person a respite, either indefinite or for a specified period of the execution of any punishment imposed on that person for any offence". This provision would, no doubt, be made use of in appropriate cases in accordance with subparagraph (b) of the resolution.

As has already been pointed out, there are only two capital offences in Kenya. It also may be pointed out that the President may use his Prerogative of Mercy to commute the death sentence where it is advisable to do so. As to total abolition of the death sentence, the situation is always under constant review through the appropriate organs of the Government of the Republic of Kenya.

Khmer Republic

/Original: French/
/14 July 1969/

1) Toute personne condamnée à la peine capitale possède le droit de former un pourvoi en cassation contre l'arrêt de condamnation dans le délai de dix jours francs à compter du prononcé de l'arrêt (art. 511 du Code de procédure pénale).

2) Une fois la décision de condamnation à la peine capitale devenue définitive, cette condamnation ne peut être exécutée sans qu'au préalable la procédure ait été soumise au Chef de l'Etat en vue de l'exercice de son droit de grâce. Le condamné n'a pas besoin de former un recours en grâce. Son cas est automatiquement examiné par le Chef de l'Etat. Afin que celui-ci dispose de tous les éléments nécessaires le dossier est d'abord étudié par une commission des grâces présidée par le Président du Conseil des ministres et composée des Ministres de la justice et de l'intérieur, des présidents de la cour de cassation et de la cour d'appel de Phnom-Penh. Après rapport du Ministre de la justice, la Commission émet un avis motivé sur la mesure de clémence envisagée. Cet avis ne lie pas le Chef de l'Etat qui prend la décision qui lui semble opportune (art. 30 du Code pénal).

3) Dès le début de la procédure criminelle, au stade de l'instruction préparatoire, il doit être désigné d'office à l'inculpé un avocat par les soins du Président du tribunal, aussitôt après le premier interrogatoire, lorsque l'inculpé n'a pas choisi lui-même un avocat (art. 110 du Code de procédure pénale).

4) Ainsi toutes les garanties sont assurées pour que le condamné à la peine capitale puisse saisir la cour suprême de ses moyens de cassation et pour que sa situation soit examinée en toute connaissance de cause, par le Chef de l'Etat dans l'exercice du droit de grâce qui lui est dévolu par l'article 44 de la Constitution.

5) La peine capitale est très rarement prononcée et le Chef de l'Etat exerce son droit de grâce avec le plus grand libéralisme. Dans ces conditions il n'est envisagé ni de modifier les textes actuellement en vigueur, ni de restreindre ou d'abolir l'application de la peine capitale.

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Kuwait

/Original: English/
/4 January 1971/

1. The death penalty in Kuwait is confined to the following crimes:

(a) High treason;

(b) An attack on the life or safety of the Amir;

(c) A usurpation by force of the powers exercised by the Amir;

(d) Murder with malice aforethought;

(e) Perjury if it leads to imposing of the death penalty on an accused person and execution of the sentence.

The Government of Kuwait does not intend to abolish the death penalty.

2. The acused, in capital cases, are given all the necessary safeguards, including the right to appeal to a higher juridical authority, to petition for pardon or reprieve; and the death penalty is not carried out until the procedures of appeal or of petition for pardon or reprieve have been terminated.

Adequate legal assistance is given in all stages of the proceedings to indigent persons.

Lebanon

/Original: French/
/2 October 1969/

Si la conjoncture sociale et législative au Liban ne permet pas d'envisager dans un proche avenir l'abolition de la peine capitale ou la réforme des textes qui la régissent, il n'en reste pas moins que la peine capitale bien que quelquefois prononcée, n'a pas été cependant exécutée depuis de nombreuses années en raison du fait que les sentences dont elle faisait l'objet n'ont pas été revêtues jusque là de l'approbation du Chef de l'Etat requise par les textes en vigueur.

Ces condamnations se sont trouvées commuées en détention plus ou moins importantes à la suite de la loi d'amnistie promulguée le 17/2/69.

Il s'ensuit qu'en l'état de la conjoncture sociale et législative actuelle, le Gouvernement libanais ne croit pas devoir envisager des modifications fondamentales au système actuel de la peine capitale.

Au surplus, il est à noter qu'au Liban, aucune personne condamnée à la peine capitale n'est privée du droit de former un recours devant une instance judiciaire supérieure ou de demander sa grâce ou une commutation de peine selon le cas.

L'article 43 du Code pénal libanais stipule que la peine capitale n'est exécutée qu'après avis de la Commission de grâce et la confirmation du jugement par le Chef de l'Etat.

Aucune condamnation à la peine capitale n'est exécutée avant que les voies de recours et, selon le cas, les possibilités de grâce aient été épuisées. De plus les lois libanaises accordent une attention particulière aux personnes indigentes en leur fournissant une assistance judiciaire adéquate à tous les stades de la procédure. Le Code pénal stipule de plus que, dans une action pénale, l'accusé a droit à l'assistance d'un avocat dès l'instruction jusqu'à la prononciation du jugement définitif.

Liberia

/Original: English/
/8 June 1972/

I. (a) In the Republic of Liberia to ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases, a person condemned to death is not deprived of the right to appeal to a higher judiciary authority. An appeal is a matter of right. ILCL tit 8 section 353.

(b) Where an accused person has petitioned the President for pardon or reprieve, he may, after conviction, remit any public forfeitures and penalties, and grant reprieves and pardons for public offences, except in cases of impeachment. Article III, section I, of the Constitution of the Republic of Liberia.

II. In Liberia, a death sentence is not carried out until the procedures of appeal or, as the case may be, of petition for pardon or reprieve have been terminated. This serves as a stay of execution. An appeal operates as a supersedeas and a stay of any further proceedings in a case. I LCL tit 8 section 370.

III. In case of indigent persons, it is the duty of the Defence Counsel at all stages of the proceedings to defend all persons in their respective counties charged with commission of criminal offences who may declare upon oath their inability because of financial destitution to retain counsel, if the judge is satisfied upon investigation as to the truth of their declaration, II LCL tit 18, section 341. There have been cases where the State has employed other lawyers to represent accused persons.

Libyan Arab Republic

/Original: English/
/11 July 1972/

1. The death penalty is a sanction provided for in the Code of Criminal Law. In addition to the provisions contained in article 31, para. C, of the Constitutional Declaration of 2 Shawal 1389 (11 December 1969), stipulating that the defendant is innocent until proved guilty and that he should be given all the guarantees for his exercise of the right of defence, article 162 of the Code of the Criminal Law Procedures requires that the Indictment Magistrate (Grand Jury) take the initiative to appoint a legal defence aid for any defendant who is indicted and brought to trial before the Criminal Court, and who has not already appointed his own lawyer. If the defendant is destitute, the public treasury should assume the defence costs.

2. In addition to the safeguards enjoyed by the defendant during the trial, like the assumption that he is innocent until proved guilty, his right to legal

defence aid, to look into the dossier of the case and request the postponement of the trial in order to prepare the defence, and also his right to deny charges by all means of evidence including testimony of witnesses and expertise, article 345, para. 2 of the Code of the Criminal Procedures requires that before a death sentence is pronounced, the Court should seek the opinion of the Mufti who, after receiving the dossier of the case, should be given a 10-day period to issue his opinion. However, if the period has elapsed and the opinion has not been given, the Court could then pronounce its sentence.

3. Judgements in criminal matters issued against defendants in absentia would become null as soon as they appeared. In such a case their retrial shall take place unless the sentence was barred by the statute of limitation (article 358 of the Code of Criminal Procedures).

4. Under article 358 (bis) of the Code of Criminal Procedures, the contradictory judgements of the death sentence should be appealed to the Court of Cassation (Supreme Court), under the rule that in all circumstances such cases should be appealed to that Court within 30 days following the date of the sentence. The appeal entails the suspension of the execution of the sentence, and the Court may reverse the sentence in favour of the defendant if it appears that it was based on a violation of the law or on an error in its application or interpretation, or if there was an inherent irregularity in the judgement or a procedural irregularity affecting the judgement.

5. Like all judgements in criminal offences, the final death sentence could be appealed by a request of reconsideration of the case for the reasons contained in article 402 of the Code of Criminal Procedures.

6. When the death sentence becomes final, the dossier will be submitted, through the Minister of Justice, to the Revolutionary Command Council. The execution of the sentence may not take place without the approval of the Council which has the right of pardon and of reducing the sentence.

7. Articles 430 to 437 of the Code of Criminal Procedures regulate the procedures concerning the execution of the death sentence.

Under those articles, the relatives of the condemned may visit him on the day set for his execution on condition that the visit take place away from the location of the execution. If under his faith the condemned must confess or practice any other religious duties before death, a minister of religion should be allowed to see him. The death sentence should be carried out inside the prison or in an enclosed area at the Attorney General's written request which should contain the approval by the Revolutionary Command Council of the execution of the sentence. The execution should take place in the presence of a representative of the Attorney General, a prison official, the prison's physician or any other physician appointed by the Attorney General. The defender of the condemned should also be permitted to attend the execution. However, no other person could be present without a special permit from the Attorney General. The conclusions of the judgement containing the death sentence and the charges warranting that sentence should be

read at the location of the execution and should be heard by all those who are present. If the condemned wished to make a statement, the representative of the Attorney General should record it.

Execution of the death sentence should not be carried out on official holidays or on holidays observed by the faith of the condemned. In the case of a pregnant woman condemned, the execution should be suspended until two months following the birth of the child.

8. With regard to restricting or abolishing the death sentence, there is no justification for its abolition as it is based on the principle of retaliation set down in the Koranic precept stipulating a life for a life, and also because retaliation as a sanction for murder was in the interest of the whole. Furthermore, capital punishment has been the most efficient deterrent to murder. As for putting restrictions on the death penalty, it is to be recalled that in order to pass a death sentence, the law has set down many guarantees such as the referral of the case to the Mufti for his opinion, the appeal to the Court of Cassation, and the submission of the sentence, once it has become final, to the Revolutionary Command Council for pardon, approval or revision. Therefore, to consider more restrictions would not be justified in view of the guarantees provided in this respect by the law.

Luxembourg

/Original: French/
/21 December 1970/

Au Luxembourg les procédures légales énumérées au paragraphe a) de cette note /SO 161/61 (5) du 31 juillet 1970/ sont en vigueur et scrupuleusement appliquées.

Au stade actuel, il ne paraît pas opportun de fixer par voie législative un ou plusieurs délais dans les conditions indiquées au paragraphe b), alors qu'en cas de besoin l'objectif fixé par la résolution 2393 (XXIII) pourrait être atteint par une simple instruction émanant du Ministère de la justice.

Il est à noter que depuis 1965 aucun fait nouveau ne s'est produit au Luxembourg dans le domaine de la législation pénale concernant les crimes susceptibles d'être punis de la peine de mort.

Depuis 1964 aucune condamnation à la peine capitale n'a été prononcée. La question d'une atténuation de la législation sur la peine capitale n'offre au Luxembourg, de l'avis des autorités compétentes, qu'un intérêt pratique limité, alors qu'en fait les rares condamnations à mort ont régulièrement été commuées par voie de grâce en condamnations aux travaux forcés à perpétuité.

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Madagascar

/Original: French/
/28 July 1969/

Dans la procédure actuellement applicable à Madagascar, déterminée par le Code de procédure pénale malagasy (Ordonnance 62-052 du 20 septembre 1962), les garanties les plus complètes sont assurées aux justiciables quelles que soient d'ailleurs les peines encourues.

Quand les faits justifiant le renvoi d'un accusé devant la juridiction de jugement sont passibles de la peine de mort, cette juridiction (comme pour tous les faits qualifiés de crimes) est composée d'un Magistrat professionnel président, d'un grade au moins égal à celui de Conseiller à la cour d'appel, et de quatre assesseurs tirés au sort sur une liste de citoyens choisis pour présenter toutes garanties de moralité et d'impartialité.

Quand les accusés renvoyés devant les juridictions criminelles n'ont pas fait choix d'un défenseur, ils sont toujours assistés d'un défenseur d'office quelle que soit leur situation de fortune.

Quand une condamnation à la peine capitale a été prononcée, le condamné peut d'abord former un recours par pourvoi devant la chambre de cassation de la Cour suprême. Celle-ci peut casser l'arrêt. Elle renvoie alors l'accusé devant une juridiction criminelle autrement composée que celle qui a condamné la première fois. Et la même procédure est à nouveau suivie.

Quand le pourvoi est rejeté, le condamné peut encore présenter un recours en grâce au Président de la République.

Naturellement aucune exécution ne peut avoir lieu avant que toutes ces voies de recours aient été épuisées.

Par ailleurs, en ce qui concerne le deuxième paragraphe du dispositif de la résolution 2393 (XXIII) de l'Assemblée générale qui demande aux gouvernements des Etats Membres quelle est leur attitude actuelle quant à la possibilité de restreindre encore l'application de la peine capitale ou de l'abolir totalement, nous devons indiquer que si la peine de mort subsiste toujours dans les dispositions actuelles des textes pénaux malagasy et si plusieurs condamnations à mort sont prononcées chaque année pour des crimes de droit commun, aucune exécution capitale n'a eu lieu en République Malagasy depuis l'indépendance, le Président de la République ayant toujours usé jusqu'ici de son droit de grâce à l'égard de tous les condamnés.

Enfin aucune condamnation à la peine capitale pour faits politiques n'est intervenue depuis l'indépendance.

Malawi

[Original: English]
[5 February 1969]

1. No death penalty in Malawi is carried out until all the processes of appeals and the executive machinery of the prerogative of mercy have been exhaustively explored. It is therefore not considered necessary to introduce the safeguard called for by operative paragraph 1 (b) [of Economic and Social Council resolution 1337 (XLIV)], namely the provision of a fixed time-limit before which the death penalty may not be carried out.

2. In view of the foregoing, the Malawi Government is, at the moment, not contemplating restrictions of the use of the death penalty as envisaged in paragraph 2 of the resolution.

Maldives

[Original: English]
[5 October 1970]

Although in the Maldivian Constitution and in the Penal Code there are crimes stated for which capital punishment is laid down, it is very rarely that a sentence of capital punishment is carried out.

Since 1965 no changes have taken place in this respect.

As for comments on the subject of the death penalty or capital punishment, it is no doubt humane and rational to restrict it as much as possible. The final decision in such matters is decidedly one for the people of each community.

Malta

[Original: English]
[18 September 1970]

A (i) The Criminal Code of Malta grants the right of appeal to any person who is convicted of any offence however petty or serious and whatever the punishment awarded including the sentence of death. Such appeal of right lies in Her Majesty's Court of Criminal Appeal constituted of three Judges. Besides this right of appeal there is an ex gratia appeal to Her Majesty in Council. Pardon or reprieve may be granted by the Governor-General, in the exercise of the

prerogative of mercy under subsection (1) of section 94 of the Constitution of Malta, in respect of any sentence. In the case of a sentence of death, subsection (2) of the said section 94 expressly provides as follows:

> "2 (a) Where any person has been sentenced to death by any court in Malta, the Governor-General shall cause a written report of the case from the trial judge, or, in the case of a court martial, the person presiding, and such other information derived from the record of the case or elsewhere as the Governor-General may require, to be sent to the Minister responsible for justice.
>
> "(b) The said Minister shall send such written report and information (if any) to the Cabinet, and the Cabinet shall advise the Governor-General whether he should grant the offender a pardon or respite in the exercise of the powers conferred on him by this section."

(ii) Section 661 of the Criminal Code of Malta expressly provides that no sentence of death shall be carried into effect until after the expiration of the time within which an appeal may be made and, if an appeal is made, until after determination of the appeal. Moreover, a sentence of death was never carried out in Malta while a petition for an appeal ex gratia to Her Majesty in Council or a petition for the exercise of the prerogative of mercy was being considered or while an appeal was being heard by Her Majesty in Council.

(iii) Indigent persons, who stand charged for any crime, are always given in Malta the free assistance of a lawyer. Indeed such assistance is given not only to indigent persons but to any person, whatever his means, who does not provide for his own defence by a lawyer. Section 512 of the Criminal Code expressly provides that "it shall be the duty of the Courts of Criminal Justice to see to the adequate defence of the parties charged or accused".

B The present legal and factual position as set out under (ii), above, does not appear to render necessary under the laws of Malta any further action to strengthen the safeguards already in force.

C The question of the retention or restriction of the death penalty in Malta still is under the consideration of the Government.

/16 September 1971/

A bill seeking "to abolish capital punishment for all crimes except crimes against the safety of the Government and except murder, for political reasons, of the Governor-General, the Prime Minister, any Minister or other member of Parliament" was introduced in Malta's House of Representatives on 23 August 1971, when it received its first reading.

Mauritius

/Original: English/
/10 July 1969/

(1) The legal procedures outlined in the first operative paragraph of the resolution /General Assembly resolution 2393 (XXIII)/ are followed in Mauritius and adequate safeguards are provided by the Criminal Appeal Ordinance, 1954 (No. 9 of 1954) and section 168 of Ordinance 13 of 1954, which provides that in capital cases the execution of the judgement may be suspended by a reprieve granted either by the Governor-General at his pleasure or by the Judge who tried the case whenever such Judge shall think that substantial justice requires that such execution be suspended.

(2) Section 9 provides for the delays within which notice of appeal or notice of application for leave to appeal shall be given. In capital cases the delay may be extended on application. Execution is not to be carried out until appeal is determined.

(3) Section 12 makes provision for legal aid and section 21 makes provision for the use of the prerogative by the Governor-General.

(4) As regards the second operative paragraph of the resolution, the Mauritius Government is not, for the time being, considering restriction of the use of the death penalty or its abolition.

Mexico

/Original: Spanish/
/12 January 1971/

1. Las reglamentaciones vigentes en la materia penal directamente relacionadas con la pena capital, aseguran los procedimientos legales más estrictos en lo que se refiere al procedimiento penal del que puede surgir como consecuencia la condena a la privación de la vida ya que, de acuerdo a lo dispuesto por el artículo 14 de la Constitución Política de los Estados Unidos Mexicanos, únicamente la autoridad judicial está facultada para imponer cualquier sanción previa al cumplimiento de todas las formalidades esenciales del procedimiento y siempre y cuando la pena que se imponga sea la exactamente aplicable al delito de que se trata.

a) No existe posibilidad legal alguna de acuerdo con la Legislación Penal Mexicana para que se prive al condenado a muerte del derecho a interponer los recursos que la Ley señala entre los cuales se encuentra el de apelación a un Tribunal superior y además el recurso o juicio de amparo que puede ser promovido contra la sentencia que dice el Tribunal superior confirmando la pena de muerte que haya sido decretada por el Juez inferior. Cabe también la posibilidad legal de presentar petición de indulto atendiéndose conforme a lo que previamente se ha reglamentado sobre la materia. Este derecho, como todos los que corresponden al acusado, tienen jerarquía de garantía constitucional, y por ello no es posible privar a nadie de libre ejercicio del mismo derecho.

b) La ejecución de las sanciones que hayan sido impuestas por las autoridades judiciales corresponde, de acuerdo al sistema legal mexicano a los órganos competentes del Poder Ejecutivo donde el requisito previo para la ejecución de toda sanción es que la sentencia dictada por el Poder Judicial haya causado ejecutoria, lo que significa que se hayan concluido en sentencia irrevocable todos y cada uno de los recursos legales contra las sanciones que se hayan impuesto. En consecuencia, es imposible la ejecución de alguna sentencia de muerte mientras se encuentre pendiente algún procedimiento o recurso interpuesto conforme a la Ley y que pueda en alguna forma modificar la sentencia dictada por los Tribunales.

c) La Constitución Política de los Estados Unidos Mexicanos prevé el caso de las personas indigentes o carentes de recursos para contratar defensores particulares que los asistan durante el procedimiento judicial a que pueden verse sometidos; la asistencia técnica que el Estado proporciona a los procesados indigentes la realiza por medio de la Institución de la Defensoría de Oficio, lo que significa que en toda fase del procedimiento criminal el acusado puede defenderse adecuadamente, sea por sí mismo, por defensor particular o por medio de defensor de oficio, adscrito al Tribunal de que se trata. La Institución de la Defensoría de Oficio funciona gratuitamente por lo que se refiere a quien recurre a sus servicios, ya que los abogados titulados que actúan como defensores de oficio son pagados directamente por el Estado.

i) Respecto del contenido del inciso b) de la petición formulada por el Secretario General de las Naciones Unidas, debe decirse que siendo la ejecución de las sanciones una facultad del Poder Ejecutivo, en México se realiza a través del órgano competente de la Secretaría de Gobernación, el cual siempre toma en consideración para toda ejecución de sanciones, las condiciones especiales de orden personal o temporal en que se encuentre quien haya de sufrir la pena decretada por los Tribunales Judiciales. Lo anterior significa que para la posible ejecución de la pena capital, se atiende, ineludiblemente a la situación que el caso particular revele, como pueden ser el estado de gestación, la edad, etc. Se realizan en la actualidad estudios especializados para reforzar los ya estrictos procedimientos legales para la ejecución de todas las sanciones, preponderantemente la de la pena capital.

ii) Al responder el Gobierno Mexicano al cuestionario que fuera formulado por la Asamblea General de las Naciones Unidas, en relación con el Tema de la Pena de Muerte, hizo notar los siguientes aspectos:

a. México es una República Federal constituida por 29 Estados, el Distrito Federal y dos Territorios.

b. De las entidades federativas mencionadas, habían eliminado la pena de muerte a la fecha del informe en cuestión 27 de ellas, conservando en sus legislaciones internas la propia pena capital únicamente cinco de los Estados Federales.

c. Recientemente, o sea, entre el lapso comprendido de 1965 a la fecha, dos de los cinco Estados que conservaban la pena de muerte, la abolieron de sus respectivas legislaciones. Estos Estados Federales fueron los de Nuevo León y Morelos.

2. Respondiendo al punto dos de la solicitud formulada por la Asamblea General por conducto del Secretario General, debe decirse que la tendencia abolicionista de la pena de muerte es notoriamente efectiva en la República Mexicana.

Esta afirmación se comprueba con lo siguiente:

a) El número definitivamente reducido de Entidades Federativas que hasta la fecha conservan en su legislación interna la pena de muerte.

b) El hecho de que no se ha ejecutado ninguna pena de muerte, no obstante que la misma haya sido impuesta en sentencia ejécutoria dictada por los Tribunales competentes. Esta referencia a la no aplicación de la pena de muerte se funda en los datos estadísticos correspondientes a los Estados que tenían o tienen la pena de muerte como sanción en sus respectivos regímenes internos.

Desde el año de 1965 a la fecha son dos los Estados Federales que han abolido la pena de muerte y ninguno de los que la conservan la ha ejecutado, sino que, invariablemente, opera la conmutación de la sanción de la pena capital por la privativa de la libertad.

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Morocco

/Original: French/
/8 May 1969/

Les termes de la résolution 2393 (XXIII) appellent les observations suivantes :

Paragraphe 1, alinéa a

La législation marocaine réserve aux criminels qui encourent la peine capitale les plus grandes garanties tant au stade de l'instruction préparatoire qu'au stade du jugement :

1) L'individu condamné à la peine de mort a, comme tout autre condamné par le tribunal criminel, la faculté de se pourvoir en cassation devant la Cour suprême et l'article 486 du Code de procédure pénale fait obligation au Président du tribunal criminel de lui rappeler cette faculté.

2) Aucune condamnation à la peine capitale ne peut être exécutée tant que les voies de recours n'ont pas été rejetées (pourvoi en cassation et, le cas échéant, requête en révision); et la décision une fois devenue irrévocable, tant que le recours en grâce, instruit d'office, n'a pas été rejeté (art. 649 du Code de procédure pénale).

Il y a lieu d'ajouter que pour des raisons d'humanité, la notification du rejet de la voie de recours n'est faite au condamné qu'en même temps que lui est notifié le rejet du recours en grâce.

3) Les personnes indigentes poursuivies pour crime, quelle que soit la nature de ce crime, sont assurées de l'assistance gratuite d'un défenseur.

Au stade de l'instruction préparatoire, l'inculpé, à défaut du choix d'un défenseur, en obtient, s'il le demande, la désignation d'office par le juge d'instruction (art. 127 du Code de procédure pénale).

Devant le tribunal criminel, l'assistance d'un défenseur est obligatoire, Si l'accusé est indigent, le Président du tribunal criminel lui en désigne un (art. 311 et 452 du Code de procédure pénale).

Il est à noter, au surplus, que le mémoire qui doit assortir obligatoirement un pourvoi en cassation et être signé par avocat agréé près la Cour suprême, est facultatif pour tous les condamnés en matière criminelle et qu'en outre, les condamnés détenus ou indigents sont dispensés de consigner l'amende (art. 579 et 581 du Code précité).

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Paragraphe 1, alinéa b

Il n'apparaît pas possible d'ajouter aux formalités protectrices ci-dessus visées la fixation d'un ou de délais avant l'expiration desquels aucune condamnation à mort ne sera exécutée.

En effet, dans la procédure marocaine, à partir du prononcé de la peine capitale un premier délai s'écoule jusqu'à ce qu'il soit statué sur le pourvoi en cassation et en cas de rejet de ce pourvoi, un autre délai commence à courir pour l'instruction du recours en grâce jusqu'à ce qu'une décision soit prise sur ce recours.

Ces deux délais successifs semblent d'autant plus suffisants qu'il serait anormal et inhumain de prolonger plus longtemps l'expectative des condamnés à mort.

Paragraphe 1, alinéa c

Compte tenu de ce qui vient d'être exposé aux alinéas a et b, il n'apparaît pas que des mesures légales complémentaires aient à être envisagées dans ce domaine par le Gouvernement marocain.

Paragraphe 2

En ce qui concerne la possibilité de restreindre encore davantage ou d'abolir la peine de mort, le Code pénal marocain, approuvé par le Dahir du 26 novembre 1962 a consacré le maintien de cette peine mais en limite l'application à des crimes d'une gravité exceptionnelle.

Il est apparu au législateur marocain que les arguments invoqués par les partisans de la suppression de la peine de mort ne pouvaient l'emporter sur le caractère efficace de cette pénalité, sur le pouvoir considérable d'intimidation et d'exemplarité qu'elle possède, sauf à la réserver aux crimes particulièrement révoltants et aucun élément nouveau n'est venu depuis 1965, militer en faveur d'une modification de cette position, du reste encore tempérée par l'exercice du droit de grâce attribué au Souverain par l'article 53 du Code pénal et largement utilisé par Sa Majesté le Roi.

Netherlands

/Original: English/
/3 June 1970/

As far as the Netherlands is concerned, no changes in the matter of capital punishment have taken place in the last five years. Consequently, the present situation continues to be correctly represented by the information submitted in reply to the inquiry held in 1965.

As for the situation in the Netherlands Antilles and Surinam:

A. Netherlands Antilles

/Original: French/

En ce qui concerne les desiderata mentionnés à la page 2 (du texte anglais) de la résolution 2393 (XXIII), il convient de noter ce qui suit :

Paragraphe 1, a), i)

Un individu condamné en première instance à la peine de mort a le droit d'interjeter appel auprès de la cour de justice et, d'autre part, de se pourvoir en cassation contre l'arrêt de cette cour de justice devant la Cour suprême des Pays-Bas.

Enfin il a le droit d'introduire un recours en grâce.

Paragraphe 1, a), ii)

Aux Antilles néerlandaises, aucun arrêt de mort n'est exécuté avant que le condamné n'ait été jugé en appel ou en cassation et que - si l'arrêt de mort est devenu irrévocable - il n'ait été décidé sur un éventuel recours en grâce.

Paragraphe 1, a), iii)

En général, la loi prévoit la possibilité d'accorder aux personnes indigentes faisant l'objet de poursuites pénales une assistance judiciaire aux frais de l'Etat. Une personne indigente faisant l'objet d'une poursuite pénale pour un délit passible de la peine de mort bénéficie certainement de l'assistance judiciaire nécessaire.

Paragraphe 1, b)

Tout condamné peut introduire un recours en grâce dans un délai de huit jours, ce qui suspend l'exécution de l'arrêt. Etant donné cette possibilité générale de suspendre l'exécution d'un arrêt, il ne paraît pas nécessaire d'élaborer des dispositions légales spéciales en la matière.

En ce qui concerne ce qui est mentionné à la page 3 sous 2 de la résolution il convient de noter que la peine de mort en tant que sanction n'existe plus qu'aux termes des articles 103 et 108 du Code pénal des Antilles néerlandaises. Ces articles se rapportent au droit pénal militaire (inciter un pays étranger à faire la guerre ou à commettre des actes d'hostilité contre l'Etat, ou encore prêter assistance à l'ennemi). Pour le moment, il n'y a pas lieu de modifier ces articles de telle sorte qu'ils ne prévoient plus la peine de mort.

Enfin il convient de remarquer que, depuis 1870, aucun arrêt de mort n'a été exécuté aux Antilles néerlandaises.

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B. Surinam

/Original: French/

L'article 9, paragraphe 1, sous a 1° du Code pénal du Surinam prévoit la "peine de mort" comme une des peines principales.

Cependant, selon la législation en vigueur au Surinam, l'exécution de la peine de mort ne peut s'effectuer sans plus.

Selon les dispositions de l'article 105, paragraphe 1 de la Constitution du Surinam, la peine de mort ne peut être exécutée, sauf en cas de déclaration de l'état de guerre ou de siège, que lorsque le procureur général en a donné l'ordre ou en a été prévenu et que lorsque le Gouverneur en a donné l'autorisation.

En vertu du paragraphe 2 de cet article, le Gouverneur ne donne cette autorisation qu'après avoir entendu le juge civil suprême du Surinam.

Les articles 310 jusqu'à 312 inclus du Code de procédure pénale du Surinam portent des dispositions plus détaillées relatives à l'exécution de la peine de mort et aux droits du condamné à mort, à savoir :

1. La peine de mort sera exécutée sur le lieu désigné par le Gouverneur mais non en public, en présence du procureur général et par-devant deux membres de la cour de justice et le greffier (art. 310, par. 2);

2. Seront admis sans restriction auprès du condamné à mort tous les ministres du culte qu'il désirera recevoir (art. 311, par. 1);

3. L'exécution de la peine de mort lui est annoncée vingt-quatre heures auparavant par les membres de la cour susmentionnée sous 1, assistés par le greffier qui, au cas où le condamné veut faire une déclaration, recueillera cette déclaration dont il dressera procès-verbal (art. 311, par. 2);

4. Le greffier dressera procès-verbal de l'exécution de la peine de mort, il fera transcrire ce procès-verbal, dans les vingt-quatre heures suivantes, au bas de l'original de l'arrêt et il signera cette transcription (art. 312, par. 1).

Bien que, comme il a été précisé ci-dessus, la législation pénale du Surinam connaisse encore la peine de mort, celle-ci n'a plus été appliquée depuis 1927.

Enfin il convient de relever qu'un règlement légal est en cours de préparation visant à abolir la peine de mort au Surinam.

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New Zealand

[Original: English]
[8 July 1970]

Capital punishment for civilians was finally abolished in New Zealand in 1961 except for the crime of treason, which carries a mandatory death sentence.

Under military law, certain offences are punishable by death or lesser punishment. The disciplinary provisions of all three Service Acts are at present being revised and consolidated but no significant changes are contemplated in the penalties applicable. No sentence of death passed by a court martial may be carried into effect until it is approved by the Governor-General.

There has never been a conviction for treason in New Zealand and nobody in recent times has been executed as a result of a sentence of death passed by a court martial.

Although there is no legal provision on the point, it is quite out of the question that a death sentence would be carried out before any extended period for appealing had expired and before the offender had had an opportunity to petition for a reprieve.

Concerning legal assistance, the Offenders Legal Aid Act, 1954, provides that a court shall direct legal aid to be granted to a person charged with murder if in its opinion his means are insufficient to enable him to obtain legal aid. The same procedure would undoubtedly be applied if an indigent person were charged with the graver capital offence of treason.

With regard to operative paragraph 1 (b) of resolution 2393 (XXIII), New Zealand opposes the fixing of a time-limit or time-limits before the expiry of which no death sentence shall be carried out. The New Zealand authorities take the view that it is highly desirable on humanitarian grounds for a sentence of death to be carried out as soon as possible after the offender has exhausted all rights of appeal and petition for reprieve, and that appeals and petitions should be determined expeditiously. This was the practice in New Zealand when capital punishment was in force. A situation where a condemned man with no hope of reprieve had to be kept in the cells awaiting the expiry of an arbitrary time-limit would not find favour with the authorities or with the public at large.

In reply to operative paragraph 2 of the resolution, the New Zealand authorities wish to advise that there are no proposals under consideration at present to restrict still further the sphere of operation of the death penalty or to abolish it entirely.

Nicaragua

/Original: Spanish/
/4 June 1969/

Aunque en Nicaragua se haya establecido la Pena de Muerte, artículo 37 de la Constitución Política, ésta no se aplica por la circunstancia de que hasta la fecha no ha sido reglamentada.

Niger

/Original: French/
/11 November 1970/

Le Code de procédure pénale assure les plus grandes garanties possibles à toute personne accusée d'un crime, même non passible de la peine capitale.

Les juridictions d'instruction et de jugement appliquent rigoureusement les prescriptions du Code de procédure en cette matière.

Dès l'interrogatoire de première comparution, le juge doit sous peine de nullité, aviser la personne accusée de tous les droits que la loi lui donne pour se défendre.

Devant la cour d'assises, un défenseur est nommé d'office à tout accusé qui n'en a pas déjà choisi un.

L'assistance judiciaire est accordée aux personnes indigentes qui en font la demande.

Une condamnation à mort ne peut être exécutée qu'après expiration des délais prévus pour toutes les voies de recours et après examen des possibilités de grâce.

Aucune condamnation à mort n'est prononcée depuis plusieurs années par les juridictions du Niger et la peine capitale figure surtout dans le Code pénal nigérien à titre d'épouvantail.

Norway

/Original: English/
/7 August 1970/

Norwegian authorities have given careful study to the relationship between existing Norwegian legislation under which capital punishment may be imposed and the recommendations contained in resolution 2393 (XXIII). It should be noted that under this legislation, the imposition of capital punishment is restricted to certain grave crimes committed in war-time or under circumstances which may be assimilated to war. It is felt that there is a significant distinction between the use of capital punishment as a means of punishment under ordinary criminal law, and its use against acts of treason or war crimes in defence of the very existence of a nation. In certain circumstances, the application of the recommended dilatory procedural safeguards for the accused may clearly defeat the basic purpose of those legislative measures which authorize the application of the death penalty for certain forms of high treason in war-time and for military crimes of a serious nature.

The Norwegian legislation under which capital punishment may be imposed has not been amended since 1965. No further change in the present law is contemplated for the foreseeable future.

Pakistan

/Original: English/
/16 April 1970/

Under the provisions of operative paragraph 1 (c) the Government of Pakistan has the following remarks to make:

(i) The most careful legal procedures and greatest safeguards exist in Pakistan for the person condemned to death.

(a) He has the right to appeal against the conviction and sentence passed to the High Court and also to the Supreme Court of Pakistan;

(b) Irrespective of the existence of an appeal, the trial judge has to make a reference to the High Court, and unless the sentence is confirmed by that Court, it is not executed. The entire record of the case is seen and considered by the superior court, even if there is no appeal by the person condemned, before the court orders confirmation;

(c) Provisions exist to petition for a pardon or reprieve to the Governor of the province concerned and the President of Pakistan. The categorical declaration in article 18 of the 1962 Constitution of Pakistan states:

"The President has the power to grant pardons, reprieves and respites, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority."

Generally, the President is moved by petition after all other remedies of the High Court, the Supreme Court and the Governor of the Province have been exhausted.

(ii) A death sentence is not carried out until the procedure of appeal or, as the case may be, of petition for pardon or reprieve has been terminated.

(iii) Indigent persons can get legal assistance at all stages of the proceedings.

The Government of Pakistan feels that there is no need to fix a time-limit on the execution of the death sentence because execution takes place only after the individual concerned or the persons interested in him have exhausted all the remedies available to them. Thus, when the sentence becomes final and is irrevocable, there would be no need or purpose in fixing the minimum time-limit.

In reference to operative paragraph 2 of resolution 2393 (XXIII), the Government of Pakistan is opposed to the total abolition of the death penalty because the laws are such that in practice, the death penalty is very sparingly exacted. Thus, it does not contemplate any further restrictions or the total abolition of the penalty and, in this regard, no changes have taken place since 1965.

Panama

/Original: Spanish/
/27 August 1971/

En Panamá no existe la pena de muerte ni confiscación de bienes.

Estos son principios que han tenido plena vigencia desde el nacimiento de la República en 1903. Ni siquiera existe la pena de prisión perpetua. La pena máxima de prisión es por veinte años.

Peru

/Original: Spanish/
/12 May 1972/

La pena de muerte en el Perú es aplicable en su legislación por precepto constitucional contenido en el Artículo 54, dentro de las garantías nacionales y sociales. Este dispositivo de la Constitución del Perú establece que se aplicará la pena de muerte por los delitos de traición a la patria, homicidio calificado y por todos aquellos que señale la Ley.

La legislación penal sustantiva establece que son delitos sancionables con la pena de muerte: el uxoricidio, el parricidio, el filicidio y el homicidio calificado, o sea, este último con las agravantes que se consignan en el Artículo 152 del Código Penal que son: aplicables para el que perpetrase el delito de homicidio por ferocidad o por lucro, o para facilitar u ocultar otro delito, o con gran crueldad, o con perfidia, o por veneno, o por fuego, explosión u otro medio capaz de poner en peligro la vida o la salud de un gran número de personas.

Estas disposiciones del Código Penal fueron modificadas por el Decreto Ley No. 18968, del 21 de septiembre de 1971, que conmuta la pena de muerte por la de internamiento para los citados delitos. La pena de internamiento será absolutamente indeterminada más allá de un mínimum de veinticinco años; se cumplirá con trabajo obligatorio y aislamiento celular continuo, durante el primer año; en los años siguientes el trabajo será colectivo entre los condenados a la misma pena.

El mismo Decreto Ley, modificatorio de los dispositivos pertinentes del Código Penal (Arts. 151 y 152) deja subsistente la pena de muerte únicamente para los autores de los delitos de traición a la patria, y de homicidio como consecuencia de rapto y sustracción de menores; norma que rige hasta nuestros días.

En la aprobación de este Decreto Ley se ha considerado la necesidad de la aplicación de pena que cumplan la finalidad penal y social de readaptar al delincuente, como obligación legal del Estado y moral de la sociedad, a la que aquél pertenece.

El procedimiento penal garantiza al acusado por delitos sancionables con la pena de muerte, al estipular que esa pena máxima sólo será aplicada cuando la responsabilidad del autor haya sido plenamente probada. Durante el transcurso del proceso el sindicado como autor del delito tiene pleno derecho a actuar en su defensa, y en caso de no poder subvencionar los gastos de un abogado, el Estado le proporciona un defensor de oficio. El proceso se inicia en primera instancia ante un Juez Instructor, quien realiza la etapa investigatoria; luego el procedimiento continúa ante un Tribunal Superior que es el que emite sentencia, pero para que se aplique la pena de muerte es necesario la votación unánime de los tres miembros del Tribunal. El sentenciado dispone de un recurso de nulidad ante la Corte Suprema de la República y por último si el Tribunal Supremo declarara no haber nulidad en la sentencia del Tribunal Superior, el sentenciado agota su trámite con un pedido de clemencia ante el Presidente de la República.

Philippines

/Original: English/
/13 January 1971/

(1) The right of a person convicted of a capital offence to appeal his conviction to an appellate court is assured by the following provisions of the Rules of Court which provides for the automatic review of all death sentences:

"Sec. 7. Transcribing and filing notes of stenographic reporter upon appeal

"In case the death penalty is imposed, the court shall order the transcription of the stenographic notes for transmittal to the Supreme Court, whether defendant has appealed or not." (Rule 122)

"Sec. 9. Transmission of record in case of death penalty

"The records of all cases in which the death penalty shall have been imposed by any court of First Instance, whether the defendant shall have appealed or not, shall be forwarded to the Supreme Court for review and judgement as law and justice shall dictate." (Ibid.)

In this connexion, under Section 9 of Republic Act No. 296, otherwise known as the Judiciary Act of 1948, the presence of eight justices is required to constitute a quorum in the review of death sentences (compared to six justices in non-capital cases) and when such number of justices should fail to reach a decision as to the propriety of the imposition of the death penalty, the penalty next lower in degree is imposed.

(2) Section 1, article III of the Constitution, contains the following guarantee: "Free access to courts shall not be denied to anyone by reason of poverty". Giving life to this guarantee, Section 13 of aforementioned Rule, read in connexion with Section 1 of Rule 125 of the same rules, provides for the designation by the Supreme Court of a counsel de officio whenever an indigent defendant manifests his desire for said representation.

(3) We are not aware of any move to further strengthen the above cited procedural safeguards, which, to our minds, are sufficient, "by the fixing of a certain time-limit or time-limits before the expiry of which no death sentence shall be carried out".

(4) Proposals abolishing the concept of capital offences were filed during the first session of the Seventh Congress. These proposals, however, failed to gain acceptance.

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/17 September 1971/

When the death penalty is affirmed in a capital case by the Supreme Court of the Philippines an additional recourse is open to the accused through a petition for executive clemency which he may submit to the Board of Pardons.

Poland

/Original: English/
/6 November 1970/

Under the laws in force since 1 January 1970 - the Penal Code (Law Gazette 1969, No. 13, para. 94), the Code of Criminal Procedure (Law Gazette 1969, No. 13, para.96) and the Code of Penal Administration (Law Gazette No. 13, para. 98) - the following provisions are made regarding appeals and reprieves following a death sentence:

Article 374, paragraph 1, of the Code of Criminal Procedure states:

"The parties have the right to appeal against a sentence passed by a trial court."

Article 463, paragraph 1, of the Code of Criminal Procedure states:

"A motion may be made for an extraordinary review of a final judgement terminating judicial proceedings."

Article 497, paragraph 1, of the Code of Criminal Procedure states:

"In accepting an application for a reprieve the trial court sends the records of the case or an indispensable part of them together with its opinion to the Prosecutor-General of the Polish People's Republic."

Article 498, paragraph 1, of the Code of Criminal Procedure states:

"If the Supreme Court or the courts of first and last resort support a reprieve, the Prosecutor-General of the Polish People's Republic submits to the Council of State the reprieve application together with the records of the case and his recommendation."

Paragraph 2:

"In other cases the Prosecutor-General of the Polish People's Republic submits an application for a reprieve to the Council of State if he is satisfied that there are circumstances warranting the exercise of the prerogative of mercy; otherwise the application is dismissed..."

Paragraph 3:

"An application for a reprieve submitted directly to the Council of State is referred to the Prosecutor-General of the Polish People's Republic for his consideration..."

Execution of the death sentence once all appeal and reprieve procedure has been completed is regulated under Polish law as follows:

Article 109, paragraph 1, of the Code of Penal Administration states:

"The death sentence is executed immediately after notification that the Council of State has not exercised the prerogative of mercy. The date of execution is decided by the court."

The rights of the accused in a trial for a capital offence are guaranteed in the following way:

Article 30, paragraph 2 of the Penal Code states:

"A basic penalty of an exceptional nature for the gravest crimes is capital punishment."

Article 31 of the Penal Code states:

"The death penalty is not applied in the case of persons who were under 18 years of age at the time of the offence or of expectant mothers."

Article 109, paragraph 2, of the Code of Penal Administration states:

"Execution of the death sentence in the case of persons who are physically incapacitated or mentally ill is deferred by the court until their recovery; decisions regarding deferment are taken immediately."

Article 19, paragraph 2, of the Code of Criminal Procedure states:

"Trials for offences liable to the death penalty are heard by a bench of two judges and three lay assessors; appeals against a death sentence or review applications seeking its pronouncement are heard by a bench of five judges."

Article 69 of the Code of Criminal Procedure states:

"An accused who has not engaged counsel may demand that a counsel be appointed by the court if he shows that he cannot pay the costs of defence without damage to the necessary maintenance of himself and his family."

Article 70, paragraph 1, of the Code of Criminal Procedure states:

"In criminal trials the accused must have defence counsel if:

"(1) He is deaf, mute or blind;

"(2) There are grounds for doubting his mental competence."

Article 71 of the Code of Criminal Procedure states:

"The accused must be represented by counsel in proceedings in a województwo court as the court of the first resort. The presence of counsel at the main trial is obligatory and also at reviews of a judgement in the Supreme Court if the Chairman of the Court or the bench consider it essential."

Article 74, paragraph 1, of the Code of Criminal Procedure states:

"If the accused in cases specified in articles 69 and 70 has not engaged counsel, during the investigation the chairman of the court due to hear the case and during the trial the chairman of the court appoints a counsel or designates a lawyer's chambers whose head appoints a counsel."

Portugal

/Original: English/
/31 August 1971/

The death penalty was abolished in Portugal in 1867.

Romania

/Original: French/
/19 January 1971/

Le nouveau Code de la République socialiste de Roumanie, en vigueur à partir du 1er janvier 1969, prévoit la peine capitale seulement comme une mesure exceptionnelle pour sanctionner un nombre restreint d'infractions extrêmement graves (les formes qui présentent un accroissement du danger social de l'assassinat, de la trahison et de l'espionnage, certaines infractions contre la paix et l'humanité et les infractions contre les biens publics qui ont des conséquences graves).

L'actuel Code pénal ne prévoit pas la peine capitale dans le cadre général de sanctions, mais la réglemente par un texte à part, ce qui souligne le caractère exceptionnel et temporaire que celui-ci possède dans la conception de la législation roumaine.

Il faut en même temps souligner, à cet égard, que toutes les fois que la partie spéciale du code mentionne la peine capitale, celle-ci est toujours prévue alternativement avec la peine d'emprisonnement allant de 15 à 20 ans, sauf uniquement les infractions de génocide et de traitements inhumains si elles sont perpétrées pendant la guerre.

De même, des dispositions expresses du Code pénal énumèrent les cas où l'on n'applique pas la peine de mort, à savoir lorsque l'infracteur n'avait pas atteint l'âge de 18 ans lors de la perpétration de l'infraction, lorsque la femme était enceinte ou avait un enfant au-dessous de 3 ans à la date où l'infraction avait été commise ou la décision prononcée. La peine capitale ne peut être exécutée si la condamnée est enceinte ou a un enfant de moins de 3 ans.

La peine capitale est remplacée par la peine d'emprisonnement si elle n'a pas été exécutée dans un délai de 2 ans lorsque le condamné était présent au jugement. Lorsque le condamné n'était pas présent au jugement ou s'est soustrait à l'exécution de la peine, la peine capitale est remplacée par la peine d'emprisonnement si elle n'a pas été exécutée dans un délai de 2 ans à partir de la date où le condamné a été appréhendé, ou dans un délai de 7 ans à partir de la date où la décision de condamnation est devenue définitive.

Le remplacement de la peine capitale aux cas prévus par le Code pénal est disposé d'office ou à la demande du procureur ou de la personne condamnée. La loi prévoit, en même temps, certaines garanties destinées à assurer une bonne administration de la justice, dans le cas des infractions sanctionnées par la peine capitale. De cette manière, le jugement en première instance de ces infractions est de la compétence du Tribunal suprême. L'assistance juridique est obligatoire, et le jugement tant en première instance, qu'en recours est fait avec la présence obligatoire du procureur.

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La personne condamnée en première instance à la peine capitale a le droit de faire recours, et jusqu'au jugement du recours, la décision de condamnation ne peut être mise en exécution. Le Procureur général et le Ministre de la justice ont droit de faire recours extraordinaire qui est jugé par le Tribunal suprême.

Le condamné à mort a droit de faire demande, pour être gracié, au Conseil d'Etat, qui peut disposer la suspension de l'exécution jusqu'au règlement de la demande en grâce.

L'exécution de l'arrêté judiciaire de condamnation à mort ne peut avoir lieu sans la disposition écrite du Président de l'instance d'exécution.

Rwanda

/Original: French/
/12 November 1970/

Le Gouvernement de la République rwandaise assure l'application des procédures légales les plus scrupuleuses et les plus grandes garanties possibles aux personnes accusées d'un crime passible de la peine capitale.

La Constitution de la République rwandaise dans son article 15 consacre le droit de défense comme absolu dans tous les états et à tous les degrés de la procédure. Dans son article 56, sub littera p, la même Constitution institue le droit de grâce et en confie l'exercice au Président de la République.

Ces dispositions constitutionnelles trouvent leur application dans l'article 99 de la loi du 23 février 1963 portant code de procédure pénale. Aux termes de cet article, l'appel est toujours interjeté d'office par le Ministère public en faveur de tout condamné à mort.

D'autre part, la loi du 23 février 1963 portant organisation de la Cour suprême prévoit dans ses articles 100 à 103 une procédure spéciale au recours en révision par la Cour suprême des jugements et arrêts rendus par les juridictions inférieures édictant une peine capitale.

Quant au droit de grâce ci-avant évoqué, il a été concrétisé par les différentes commissions d'amnistie et de commutation de peine. La plus récente de ces commissions poursuit encore ses travaux à l'heure actuelle.

Restreindre l'application de la peine capitale est le souci continu du Gouvernement rwandais. Les sentences rendues par les juridictions de jugement en témoignent concrètement.

En ce qui concerne une abolition totale de principe de la peine capitale, elle apparaîtrait par contre incompatible avec l'équité sociale et le maintien de l'ordre public, ainsi qu'en témoigne, par ailleurs la tendance actuelle de certains pays à rétablir cette peine qu'ils avaient auparavant abolie.

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Sierra Leone

/Original: English/
/8 August 1969/

In Sierra Leone persons accused of criminal charges, capital cases in particular, are given safeguards and are assured of the most careful procedure. Any person condemned to death has the right of appeal to a higher judicial authority including the Privy Council. Until the process of appeal is duly terminated, sentence of death on conviction cannot be carried out. The state also provides counsel to defend indigent persons right up to the highest judicial authority in Sierra Leone.

With regard to the question in paragraph 2 of General Assembly resolution 2393 (XXIII), viz whether there is in Sierra Leone a trend towards the abolition of capital punishment, the Permanent Representative wishes to state that no positive steps have been taken in this direction since 1965. The death sentence is still passed though this is mandatory only in treason and murder cases. The death penalty is retained more in theory as only very few people have been executed.

The jury on a treason or murder trial must always be unanimous in their verdict for a conviction. Experience has shown that even in a clear case of murder the jury only give a verdict of manslaughter which does not carry the death penalty. In this respect it can be said that there is a national tendency towards abolition.

Even where the death sentence has been passed, the Governor General with the help of a Committee, can exercise the prerogative of mercy and grant a reprieve. This provision is entrenched in the constitution of Sierra Leone. The Governor General, through the exercise of the prerogative of mercy, has in many cases, commuted the death sentence to a lesser punishment.

Singapore

/Original: English/
/31 July 1969/

(i) A person condemned to death by the High Court in Singapore has, under section 50 (1) of the Courts of Judicature Act, 1964, a right to appeal to the Federal Court, subject to the provisions of the said Act or any other written law regulating the terms and conditions upon which the appeal may be brought.

From the decision of the Federal Court, a condemned man has by virtue of section 3 (2) (c) of the Judicial Committee Act, No. 37 of 1966, a right to appeal to the Judicial Committee of the Privy Council where application for special leave has been made to the Committee and the Committee has granted special leave to appeal.

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As a last resort, the condemned man may petition to the President for pardon or reprieve and section 8 of the Republic of Singapore Independence Act, 1965, provides as follows:

"8. (1) The President, as occasion shall arise, may, on the advice of the Cabinet:

"(a) ...

"(b) Grant to any offender convicted of any offence in any court in Singapore, a pardon, free or subject to lawful conditions, or any reprieve or respite, either indefinite or for such period as the President may think fit, of the execution of any sentence pronounced on such offender; or

"(c) Remit the whole or any part of such sentence or of any penalty or forfeiture imposed by law.

"(2) Where any offender has been condemned to death by the sentence of any court and in the event of an appeal such sentence has been confirmed by the appellate court, the President shall cause the reports which are made to him by the Judge who tried the case and the Chief Justice or other presiding Judge of the appellate court to be forwarded to the Attorney-General with instructions that, after the Attorney-General has given his opinion thereon, the reports shall be sent, together with the Attorney-General's opinion, to the Cabinet so that the Cabinet may advise the President on the exercise of the power conferred on him by subsection (1)."

(ii) As provided for by section 57 (3) of the Courts of Judicature Act, 1964, in the case of a conviction by the High Court involving sentence of death, the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal may be given or any extension of time which may be permitted; and if notice is so given the sentence shall not be executed until after the determination of the appeal.

(iii) Under the Judicial Committee (Criminal Appeals) Rules, 1966, promulgated under sections 16 and 17 of the Courts of Judicature Act, 1964, when intimation is received by the Registrar of the High Court from or on behalf of a prisoner under sentence of death that he intends to apply to the Judicial Committee for special leave to appeal, the Registrar will inform the Secretary to the Cabinet. Upon receipt of this information, no date will be fixed for the execution, or, if a date has already been fixed, the execution will be postponed, and a date, three weeks later, will be fixed, before which date proof must be furnished to the Registrar that the process for the necessary application has been started. After proof is furnished the execution will then be postponed until intimation of the outcome of the application from the High Commissioner for Singapore in London is received by the President.

(iv) In cases where the accused is charged with a capital offence, the State provides the accused with a counsel if he is an indigent person.

Spain

/Original: Spanish/
/30 November 1970/

1. La invitación que la resolución 2393 (XXIII) dirige a los Estados para que "aseguren los procedimientos legales más estrictos y las mayores garantías posibles a los acusados en casos de pena capital", puede considerarse como cumplida de antemano en lo que se refiere al caso de España, ya que:

a) Nuestro ordenamiento procesal no solamente no priva al condenado a muerte del derecho a apelar a un Tribunal superior, ni de la posibilidad de presentar una petición de indulto o conmutación de la pena, sino que la Ley establece que contra las sentencias que impongan la pena de muerte, "se considerará admitido de derecho, en beneficio del reo, el recurso de casación" (Artículo 947 de la Ley de Enjuiciamiento Criminal). Además, si el recurso no fuese estimado, por cualquier razón, "la Sala mandará remitir los autos al Tribunal de que procedan para que en el término que se fije, no superior a treinta días, y oyendo previamente al Fiscal, emita informe acerca de si concurre algún motivo de equidad que aconseje la conmutación de la pena impuesta.

Devueltos los autos, se pasarán al Fiscal y con lo que éste exponga y con vista de los méritos del proceso, si la Sala encontrare algún motivo de equidad para aconsejar que no se ejecute la sentencia firme, propondrá al Jefe del Estado, por conducto del Ministro de Justicia, la conmutación de la pena" (Artículo 953). El Jefe del Estado podrá, incluso sin esta propuesta, hacer uso del derecho de gracia.

El conjunto del sistema ha producido como resultado el que pueda afirmarse que, de hecho, es muy difícil que la pena de muerte llegue a ejecutarse en España.

b) De acuerdo con lo señalado, la ejecución no puede tener lugar hasta después de haber agotado, no sólo los recursos, sino la posible propuesta o petición de indulto (artículos 989 y siguientes).

c) Las personas indigentes disfrutan de asistencia judicial y profesional en todos los procedimientos, incluidos los que puedan dar lugar a la imposición de la pena de muerte, por supuesto.

d) La situación que acaba de exponerse no parece necesitar el correctivo sugerido en el apartado b) del número 1 de la resolución, ya que el resultado final que se obtiene no permite llevar a cabo una ejecución sino después de transcurrido bastante tiempo desde la condena.

2. La posibilidad de restringir todavía más el uso de la pena capital o de llegar a su total abolición, no ha sido analizada oficialmente, ya que el estado general del problema no es acuciante y en la práctica se ha llegado a la inaplicación por desuso, aún sin reforma legislativa. La evolución de la cuestión desde 1965 no ha alterado esta situación, sino que por el contrario, teniendo en cuenta que durante los últimos cuatro años no se ha ejecutado ninguna pena capital, podemos afirmar que ha debilitado el problema.

Swaziland

[Original: English]
[18 April 1969]

The safeguards contained in subparagraph (a) of the first operative paragraph of the resolution [General Assembly resolution 2393 (XXIII)] are securely protected by the Constitution of the Kingdom of Swaziland or by the invariable practice of the Judicature:

(i) A person condemned to death cannot be deprived of his right to appeal to a higher judicial authority in terms of section III of the Constitution, or of his right to petition for pardon or reprieve in terms of section 92 of the Constitution without Constitutional amendment;

(ii) A death sentence may not be carried out until the procedures of appeal or petition are terminated;

(iii) In all cases in the High Court where indigent persons are prosecuted for an offence which may result in the death sentence the High Court appoints Pro Deo Counsel for the defence of such persons.

With respect to subparagraph (b) of the first operative paragraph of the resolution, the Government of the Kingdom of Swaziland does not propose at this time to initiate the fixing of time-limits as described in that subparagraph.

The Government of the Kingdom of Swaziland does not intend to alter the present policy on capital punishment, which has not changed since 1965.

Sweden

[Original: English]
[28 April 1969]

Capital punishment was abolished in Sweden de jure in 1921, the last execution having taken place in 1910.

1. Capital punishment may, however, still be used when the Realm is at war. Thus, according to an Act of 30 June 1948 concerning capital punishment when Sweden is at war, such punishment may follow for rebellion and for certain other offences enumerated in chapters 19, 21 and 22 of the Penal Code of 1962, provided that imprisonment for life could be imposed for the same offences in peace-time.

2. A death sentence passed by a military or civil court in war-time must by such a court ex officio be submitted to a Court of Appeals for revision. Before the expiry of three weeks from the day the sentence was passed or, if the sentence

was passed in contumaciam, three weeks from the day the sentence was officially notified to the convict, he shall submit his written pleadings to the Court. Within two weeks after the lapse of the said three weeks the Court of Appeals shall conduct oral pleadings. If the Court of Appeals confirms the death sentence the execution thereof may, however, not take place before the King-in-Council decides to have the death sentence effected. If such a decision is taken the convict still retains the right to petition for pardon, in accordance with art. 26 of the Constitution of 1809.

3. Regulations as to the execution of death sentences shall according to the Act be issued. Such regulations have, however, so far not been laid down.

4. It can not be excluded that, at a later date, consideration may be given to such amendments in the stipulations on capital punishment that the use of this form of punishment will be further reduced or completely abolished.

5. Finally, Sweden has ratified, inter alia, the Geneva Conventions of 1949 relative to the Protection of Civilian Persons in Time of War and relative to the Treatment of Prisoners of War. Articles 75 and 101 respectively in the said Conventions stipulate a delay of six months before the executions of a death sentence, the delay to be calculated from certain dates specifically provided for in the said articles.

Syrian Arab Republic

/Original: English/
/22 May 1969/

The Syrian legislation ensures careful legal procedures and safeguards for the accused in capital cases. Of these safeguards the following are the most important:

1. The right of the accused to be heard in self-defence is inviolable. In case the defendant has not appointed a lawyer, the court must appoint one on his behalf.

2. Once a criminal case has been tried by the Criminal Court, it is compulsory to refer the dossier of the case to a higher judicial authority, that is the Court of Cassation. This court shall pronounce itself on both the trial and the sentence. This procedure is followed even when the person condemned to death does not challenge the decision of the Criminal Court.

3. The decision of the Court is ipso facto referred to the "Committee of Pardon", composed of five high-ranking judges, whose task is to pronounce itself on the execution of the sentence.

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4. The final decision of the execution of the death penalty is taken by the Chief of State. He has the authority to commute the sentence to a preventive or a restrictive limitation of freedom. Thus the Chief of State is not bound by the decision of the "Committee of Pardon".

With regard to the inquiry concerning the "present attitude to possible further restriction of the use of the death penalty or to its total abolition", the aforementioned paragraphs show the great amount of restriction that exists in the Syrian Arab Republic on the death penalty. As to its abolition it is the considered belief of the Government of the Syrian Arab Republic that it is one of the most difficult subjects that cannot be adequately investigated without taking into consideration developments in the penal field and whether these developments justify the total abolition.

Togo

/Original: French/
/1 August 1969/

1. Aux termes de la législation pénale en vigueur au Togo, les personnes condamnées à mort par la cour d'assises ont la faculté de se pourvoir en cassation. L'article 371 du Code local d'instruction criminelle précise que le Président de la cour d'assises avertira l'accusé de la faculté qui lui est accordée de se pourvoir en cassation et du terme dans lequel l'exercice de cette faculté est circonscrit (ce délai étant de trois jours francs).

2. Par contre, l'Ordonnance No 19 en date du 25 avril 1967 qui a créé une cour militaire spéciale chargée de connaître des crimes commis par des militaires dans l'exercice de leurs fonctions, déclare en son article 8 que la décision de la cour n'est susceptible que d'un recours en grâce.

3. Le recours en grâce appartient au Chef de l'Etat à titre personnel. En cas de condamnation à mort et de rejet du pourvoi, un recours en grâce peut être introduit par le condamné. En cas de condamnation à mort, les autorités judiciaires feraient d'ailleurs instruire d'office un recours en grâce.

De toutes les façons, toute personne comparaissant aux assises, est assistée d'un avocat, constitué par ses soins ou commis d'office, et toute garantie lui est assurée par la présence de ce conseil.

4. Dans le Code pénal du Togo qui est toujours le Code pénal français, la peine de mort figure en tête de l'échelle générale des peines, comme peine criminelle afflictive et infamante. Elle sanctionne les crimes les plus graves prévus au Code pénal.

Une Commission de réforme des textes législatifs et réglementaires composée de magistrats et de juristes, étudie actuellement la refonte des principaux codes. La Sous-Commission du Code pénal a commencé à peine ses travaux mais son avant-projet maintient la peine de mort.

Toutefois la question du maintien ou de l'abolition de la peine capitale sera examinée à nouveau par la Commission plénière qui pourrait adopter une position différente de celle de la Sous-Commission du Code pénal et en dernier ressort par le Conseil des ministres. Il faudra donc attendre l'élaboration définitive et la promulgation du nouveau Code pénal togolais pour savoir si notre législation maintiendra ou abolira la peine capitale.

Il est à noter enfin que depuis l indépendance, il n'y a eu aucune exécution capitale au Togo.

Trinidad and Tobago

[Original: English]
[8 October 1970]

1. A person condemned to death is not deprived of the right of appeal to higher judicial authority. This right is, however, subject to two qualifications:

(a) The right must be exercised within a certain time specified by law - that is to say, within fourteen (14) days after conviction and sentence;

(b) Appeals to the Judicial Committee of the Privy Council are subject to the discretion of the local Court of Appeal.

2. As a matter of practice, whenever the death penalty is imposed a report of the case is submitted by the Attorney General's Department to a Mercy Committee together with any mitigating or extenuating circumstances which ought to be taken into consideration.

3. The prerogative of mercy is exercisable by the Governor-General.

4. The death sentence is never carried out until the procedures of appeal, or petition for pardon or reprieve have been terminated.

5. The Crown provides Counsel for persons arraigned on capital charges who are unable to retain Counsel. Counsel is not usually assigned during the preliminary inquiry. While active consideration has not been given to the fixing of a specific time-limit before the expiration of which no death sentence shall be carried out, the entire question of capital punishment is now under review.

6. These has been no significant change in this regard since the year 1965.

Turkey

[Original: English]
[8 March 1972]

There has been no change in the practice of capital punishment in Turkey and the necessary information with regard to the safeguards for the accused in capital cases and its practices was transmitted to the Secretariat at an earlier stage.

Uganda

/Original: English/
/17 July 1972/

The death penalty exists under the laws of Uganda for the following offences: murder, treason, kidnapping with intent to murder and robbery using deadly weapons.

The Uganda Constitution provides for an Advisory Committee which reviews all death sentences and recommends to the President as to whether such sentences should be commuted to lesser sentences. Consequently, there has been so far no executions carried out for anybody found guilty of robbery with violence. A copy of the Uganda Penal Code Act has been enclosed for further information.

Ukrainian SSR

/Original: Russian/
/24 June 1969/

The general principle proclaimed in article 3 of the Universal Declaration of Human Rights that "everyone has the right to life, liberty and security of person" is implemented in the Ukrainian SSR in the entire complex of rules of criminal law and criminal procedure governing the application of the death penalty as a measure of criminal punishment.

In Ukrainian criminal law (article 24 of the Penal Code of the Ukrainian SSR) the death penalty is regarded as an exceptional measure, adopted on a provisional basis, which is applicable only for the commission of particularly serious crimes.

The limited sphere of application of the death penalty is defined by the succeeding provision of the substantive law. These include, firstly, the establishment of a precise list of the crimes for the commission of which the application of the death penalty is allowed (certain crimes against the State, cases of premeditated murder accompanied by aggravating circumstances and certain other particularly serious crimes) and, secondly, restriction of the application of the death penalty by the designation of certain persons to whom the death penalty cannot be applied, namely, persons who were under the age of 18 years when the crime was committed, and women who were pregnant at the time when the crime was committed or when sentence was pronounced. Likewise, the death penalty cannot be applied to a woman who is pregnant at the time when the sentence is to be executed (article 24 of the Penal Code of the Ukrainian SSR).

In cases where the death penalty cannot be applied to the guilty person another punishment is imposed - either an alternative penalty indicated in the penalty clause of the article covering the actions of the person concerned or another, less severe punishment.

The Supreme Court of the Ukrainian SSR has pointed out to the courts on several occasions that, in punishing severely persons guilty of serious crimes, they must exercise particular caution in imposing such an exceptional punishment as the death penalty, bearing in mind that the law merely provides that this measure is possible, but does not make it compulsory.

The same general idea of the restricted application of the death penalty has been embodied in the legal provisions that preclude the imposition of this penalty after the expiry of the statutory periods of limitation for the institution of criminal proceedings (article 48 of the Penal Code of the Ukrainian SSR) and for the execution of the sentence (article 49 of the Penal Code of the Ukrainian SSR):

The question of applying limitation to the person who has committed a crime for which the death penalty may lawfully be imposed is determined by the court. If the court finds it possible to apply limitation, the death penalty cannot be imposed and is replaced by deprivation of liberty;

The question of applying limitation to a person who has been sentenced to death is determined by the court. If the court does not find it possible to apply limitation, the death penalty is replaced by deprivation of liberty.

A number of provisions of the legislation on criminal procedure serve to ensure maximum safeguards for persons charged with particularly serious crimes in respect of which the application of the death penalty is allowed by law.

In all cases relating to crimes in respect of which the application of the death penalty is allowed by law a preliminary investigation is compulsory (article 111 of the Code of Criminal Procedure of the Ukrainian SSR).

Counsel for the defence must be present at the examination of the criminal case in a court of first instance, where the penalty clause of the relevant article prescribes the death penalty (article 45 of the Code of Criminal Procedure of the Ukrainian SSR), the court not being bound in such cases by the refusal of the accused to have counsel (article 46 of the Code of Criminal Procedure of the Ukrainian SSR).

In pronouncing sentence the court must state its grounds for choosing such an exceptional measure as the death penalty, since, as a rule, this punishment may be imposed only if the aggravating circumstances specified in the law are present (article 334 of the Code of Criminal Procedure of the Ukrainian SSR).

If the accused has been sentenced to death the president of the court must acquaint him with his right to petition for pardon (article 341 of the Code of Criminal Procedure of the Ukrainian SSR).

Under the Constitution the right of pardon is exercised by the Presidium of the Supreme Soviet of the Ukrainian SSR.

The procedure for the examination of petitions for pardon is prescribed by special decisions of the Presidium of the Supreme Soviet of the Ukrainian SSR.

The institutions of the cassation review and supervisory review of sentences are another important safeguard against the unwarranted application of the death penalty.

Article 347 of the Code of Criminal Procedure of the Ukrainian SSR grants the convicted person and his counsel the right to appeal the court's sentence in cassation proceedings. The cassation instance has power to alter the sentence and to mitigate the punishment imposed if it finds that the severity of the punishment is inconsistent with the seriousness of the crime committed and with the personality of the convicted person (article 374 of the Code of Criminal Procedure of the Ukrainian SSR).

The sentence becomes final on the expiry of the period allowed for cassation appeal and protest, if it has not been the subject of an appeal or a protest. Where a cassation appeal or a cassation protest has been lodged, the sentence, if not annulled, becomes final after the examination of the case by the cassation instance (article 401 of the Code of Criminal Procedure of the Ukrainian SSR). Thus a sentence cannot be executed until any appeal procedure has been completed.

Chapter 31 of the Code of Criminal Procedure prescribes the rules for review, by the judicial supervision procedure, of sentences that have become final.

The supervisory procedure for the review of sentences is an important supplementary means of ensuring legality. The right to protest against sentences in such cases is vested in a comparatively large number of officials, inter alia, the procurator and the President of the Supreme Court and their deputies, and also the procurators of the regions, the presidents of the regional courts and a number of officials of military justice (article 384 of the Code of Criminal Procedure of the Ukrainian SSR).

The judicial supervisory instance (article 388 of the Code of Criminal Procedure) may, without any limitation in time, alter the sentence where this has the effect of mitigating the punishment. There is, however, no possibility of reviewing a sentence by the judicial supervisory procedure on the ground that the punishment was too lenient or that a law respecting a more serious crime should be applied, after the expiry of a period of one year from the date on which the sentence became final (article 385 of the Code of Criminal Procedure of the Ukrainian SSR).

By virtue of the legislation on criminal procedure (articles 43 to 48 of the Code of Criminal Procedure of the Ukrainian SSR) and the system established in the Republic for legal assistance to the population (the Regulations on the Legal Profession of the Ukrainian SSR, approved by the Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 25 September 1962), legal assistance is made available at all stages of legal proceedings to all interested citizens, including persons who incur criminal liability in respect of particularly serious crimes for which the death penalty may be applied.

It is evident from the foregoing that in the Ukrainian SSR the greatest care is taken to observe the rules of substantive and procedural law and to ensure the maximum safeguards for persons who are liable to the death penalty because of the nature of the crimes they have committed.

United Kingdom of Great Britain
and Northern Ireland

/Original: English/
/2 February 1971/

Paragraph 2 /of General Assembly resolution 2393 (XXIII)/

Murder

In Great Britain the Murder (Abolition of Death Penalty) Act, 1965, abolished capital punishment for those categories of murder that had continued to carry a mandatory penalty of death under the Homicide Act, 1957, and made imprisonment for life (or detention during Her Majesty's pleasure in the case of persons under the age of 18) the mandatory sentence. The Act came into operation on 9 November 1965 with a provision for it to continue in force until 31 July 1970 and then to expire unless Parliament otherwise determined by affirmative resolution of both Houses. Such resolutions were passed in December 1969, thus making permanent the abolition of capital punishment for murder.

In Northern Ireland, the Criminal Justice Act (Northern Ireland), 1966, abolished the mandatory death penalty for murder, with the exception of the following categories:

(a) Murder of any constable or person in the service of the Crown acting in the course of, or of any person assisting any constable or person acting in the course of, any duty involving the enforcement of the law, the maintenance of law and order, or the administration or advancement of justice; and

(b) Murder done in the course or furtherance of any seditious conspiracy.

For all other offences of murder, the penalty became life imprisonment, as in Great Britain. There is no proposal at present to change the law, either by further restricting or abolishing the capital penalty.

In the United Kingdom no person has been executed for murder since the end of 1964.

Offences other than murder

In addition to the prescribed offences of murder in Northern Ireland, the death penalty may still be passed in the United Kingdom for certain other crimes under the civil law. The only offence that falls under this classification which applies throughout the United Kingdom is treason under the Treason Acts, for which the death penalty is mandatory. There is no proposal to change the law, but no executions have taken place for offences committed outside war-time for more than 100 years.

In England and Wales, the capital penalty is additionally available as a maximum penalty on conviction of arson in dockyards and arsenals under the Dockyards, Etc., Protection Act, 1772, and on conviction of piracy with violence under the Piracy Act, 1837. But the death penalty can be regarded as obsolete in relation to these offences, which are likely to be repealed in due course.

In Northern Ireland, capital punishment also applies to crimes under sections 2 and 3 of the Explosive Substances Act, 1883, which were made capital offences by section 6 of the Civil Authorities (Special Powers) Act (Northern Ireland), 1922. The death penalty is not mandatory for these offences and no person has been executed for them: there is no proposal to change the law. And what is said above about the offence under the Dockyards, Etc., Protection Act, 1772, (see paragraph above) also applies to Northern Ireland.

Paragraph 1 (c)

With the abolition of the death penalty for murder in Great Britain, the class of capital offences has been so greatly restricted that prosecutions and appeals are likely to be virtually unknown. However, a person found guilty of a capital crime would have the right of appeal to a higher court, and arrangements exist whereby a condemned person would not be put to death before his right of appeal had entirely lapsed. In England and Wales, provision to this effect is made in the Criminal Appeal Act, 1968, which states inter alia that appeals in capital cases shall be determined quickly and that sentence of death shall not be executed until expiration of the time within which an application for leave to appeal may be made or, when such an appeal has been made, until it or any appeal for which leave is granted has been determined.

In addition to the right of appeal, it has long been the established practice in the United Kingdom for every capital case to be reviewed before the law is allowed to take its course, so that consideration may be given to whether there are sufficient grounds to justify the exercise of clemency. In civil cases in Great Britain, this responsibility falls to the Home Secretary and the Secretary of State for Scotland, who would have before them all the material that had been before the courts, as well as the transcript of the proceedings, medical reports and other relevant documents. All the circumstances would be considered most carefully before it was decided whether or not there were grounds for advising the Crown to grant a reprieve.

The legal system in the United Kingdom provides for legal aid for indigent persons charged with capital crimes, so as to ensure that the accused has available the services of competent, qualified and independent counsel.

As to fixing a minimum period before the expiry of which no death sentence shall be executed, it has for many years been the practice in the United Kingdom to keep the time between sentence of death and the date of execution to a minimum, consistent with the need to allow proper arrangements for an appeal and for assembling all relevant information that might justify a reprieve. The insistence on a short period between sentence and execution was prompted by a desire, for reasons of humanity, to restrict the period of mental strain for the condemned

person. There appears to be no justification for fixing a minimum time-limit, which must be arbitrary and might discourage desirable efforts to expedite the completion of the processes of appeal and administrative review in capital cases.

The Armed Forces

In addition to subjection to the civil law, the United Kingdom Armed Forces have their own statutory codes of discipline which prescribe capital punishment as the discretionary maximum penalty for certain service offences of a treasonable or mutinous character committed in active service conditions or, in the case of mutiny, accompanied by violence or the threat of violence. The death penalty for mutiny with violence when not on active service will be removed by the current Armed Forces Bill, but no other change is proposed.

In general it can be said that a person sentenced to death by a court martial has rights of appeal which are equivalent to those available to a person so sentenced by a civil court, and that no such sentence would be carried out until those rights had been exhausted and the case had been revieved.

United Republic of Tanzania

/Original: English/
/10 January 1972/

With regard to the problem of capital punishment, the Tanzania Government is currently studying it with a view to its possible further restriction or total abolition in Tanzania.

United States of America

/Original: English/
/10 July 1972/

It is difficult for the United States Government at this time to take a clear position on the issue of possible further restriction on the use of the death penalty or its total abolition because the United States attitude is subject to the continuing interaction of the judicial, legislative, and executive branches of our Government, both on a federal and state level. However, the United States Supreme Court has recently handed down a significant decision concerning the permissibility of capital punishment under the United States Constitution, and this decision will clearly set the limits for further action on the question by the legislative and executive branches. We are therefore transmitting a copy of this decision, Furman v. Georgia.

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/The decision Furman v. Georgia ruled by 5 votes to 4 that capital punishment was an "unusual" and "cruel" punishment. It is not clear though to what extent the decision makes capital punishment unconstitutional in the United States./

Upper Volta

/Original: French/
/1 March 1971/

Aucune condamnation à la peine capitale ne peut être exécutée en République de Haute-Volta tant que subsiste la possibilité d'exercice d'une voie de recours.

Conformément aux textes en vigueur, le recours en grâce est de droit.

Aux termes de l'article 684 du Code de procédure pénale, "la condamnation ne peut être mise à exécution que lorsque la grâce a été refusée".

Par ailleurs, l'article 36 de l'Ordonnance No 70-060-PRES-J du 30 décembre 1970, stipule en matière de justice militaire : "... Au cas de condamnation à mort, il ne pourra être procédé à l'exécution de l'arrêt qu'après qu'il aura été statué sur le recours en grâce...".

Il convient enfin de préciser que le recours en grâce peut être renouvelé deux fois (art. 3, alin. 3 du Décret No 160-PRES-J du 16 janvier 1961 réglementant le droit de grâce).

S'agissant de la possibilité de restreindre davantage l'application de la peine capitale, il faut souligner qu'en Haute-Volta, une telle peine a toujours été prise dans des cas rares et exceptionnels. Toutefois, on n'envisage pas pour l'instant l'abolition en droit de la peine capitale.

Uruguay

/Original: Spanish/
/26 April 1971/

Por la ley de 23 de septiembre de 1907, Uruguay suprimió la pena capital, en los siguientes términos:

"Art. 1ro. Queda abolida la pena de muerte que establece el Código Penal. Queda igualmente abolida la pena de muerte que establece el Código Militar.

"Art. 2do. En los casos de abolición de la pena de muerte establecida en el artículo anterior, se impondrá la de penitenciaría por tiempo indeterminado, sin que en ningún caso puedan los jueces fijar su duración.

La pena indeterminada tendrá como maximum 40 años y como minimum 30 años."

La pena de muerte ha sido suplantada, pues, en el Uruguay, por la de penitenciaría, que puede durar 30 años y a la que, de ser necesario, podría agregarse una medida de seguridad eliminativa, que es aplicable a los habituales "y a los homicidas que por la excepcional gravedad del hecho, derivada de los móviles, de la forma de la ejecución, de los antecedentes y demás circunstancias afines, denuncien una gran peligrosidad" (Art. 12 del Código Penal Uruguayo).

No es del caso entrar a considerar los demás aspectos técnicos, referentes a la aplicación de las penas y a la liberación condicional. A los efectos del tema que tratamos, basta destacar que la pena de muerte en el Uruguay ha sido eliminada desde años y sustituida por un régimen penal que cumple adecuadamente la defensa social que corresponde a la función represiva.

Venezuela

/Original: Spanish/
/23 June 1970/

A este respecto, se reitera que de acuerdo con la Constitución Nacional y el Código Penal vigente no existe en Venezuela la pena de muerte, la cual fue abolida en el año de 1863, según Decreto No. 1361.

La Constitución Nacional vigente de 1961, establece en su Artículo 58 lo siguiente: "El derecho a la vida es inviolable. Ninguna ley podrá establecer la pena de muerte ni autoridad alguna aplicarla".

Yemen

/Original: English/
/21 June 1972/

The death penalty is retained in Yemen. It is well known that the death penalty is constituted by the Islamic Shariaa (Law) which is the origin of all laws in Yemen. The death penalty is determined in the Courts and it is primarily the sentence for committing murder intentionally with premeditation, unless the perpetrator is pardoned by the relatives of the victim or if the relatives of the victim accepted the compensation of blood money.

There are a few other circumstances in which capital punishment is applicable. In any case, capital punishment decided by a court could not be implemented unless the head of state ratifies that decision.

UNITED NATIONS

SECRETARIAT

Distr.
GENERAL

ST/SOA/118/Add.1
17 November 1972
ENGLISH
ORIGINAL: ENGLISH/SPANISH

CAPITAL PUNISHMENT

Information from Governments compiled by the United Nations Secretariat

Addendum

INFORMATION RECEIVED FROM GOVERNMENTS

Bahrain

[Original: English]
[14 September 1972]

The Bahrain Penal Code of 1955 provides for the application of capital punishment in the following cases:

1. Premeditated murder;

2. Treason;

3. Piracy;

4. Military action against the Head of the State or his Government.

However, the above law provides for the substitution of capital punishment by life imprisonment in the following cases:

(a) Where the person convicted of the capital punishment is less than 18 years old;

(b) Where the person convicted of the capital punishment is a pregnant woman.

Moreover, in all cases capital punishment cannot be executed without first obtaining the assent of the Head of the State on the said conviction.

While the Bahraini legislative authorities have not yet debated the question of the possibility of abolishing capital punishment, they would, however, give a greater thought and consideration, in the future, to the recommendation provided in paragraph 3 of the above-mentioned resolution [General Assembly resolution 2857 (XXVI)], which provides for restricting "the number of offences for which punishment may be imposed".

Honduras

/Original: Spanish/
/24 October 1972/

La República de Honduras, fiel intérprete de la Declaración Universal de los Derechos Humanos, garantiza la inviolabilidad de la vida, sin que por ninguna autoridad pueda establecerse ni aplicarse la pena de muerte. El derecho de defensa es inviolable, y todo ciudadano tiene las garantías establecidas por la Carta Magna, de interponer todos los recursos estipulados por la ley. Toda persona acusada de delito tiene derecho a que no se prejuzgue su responsabilidad, considerándose como inocente mientras no se pruebe lo contrario. Ninguna persona puede ser presa o detenida sino en los lugares que determina la ley; y se prohibe absolutamente la fustigación y toda clase de tormentos.

Malawi

/Original: English/
/9 November 1972/
/Additional reply/

The Malawi Government has studied resolution 1574 (L), adopted by the Economic and Social Council at its fiftieth session, and clarifies its position as follows:

(a) The continued retention of the death penalty is considered by the Government of Malawi as necessary for the proper maintenance of law and order in Malawi and, in particular, for the deterrence of those who might otherwise commit the very serious crimes which still attract that punishment;

(b) The Government of Malawi has, at present, no plans for either the total abolition of the death penalty or for future restriction upon its use;

(c) There have been no changes in this respect since 1965.

Malta

/Original: English/
/8 November 1971/
/Second additional reply/

The Bill to abolish capital punishment, to which reference was made in the Note of 16 September 1971 /from the Permanent Mission of Malta to the United

Nations/, has since been passed by the Parliament of Malta with significant amendments. The amendments in question withdrew the exceptions mentioned in the Note of 16 September 1971 and the Act now provides for the abolition of the death penalty and its complete erasure from the Criminal Code. The death penalty is now only retained in the Malta Armed Forces Act, 1970, and is applicable only to persons subject to military law for offences involving aid to the enemy.